

REPORTER'S RECORD

74145

VOLUME 59 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

PUNISHMENT PHASE BY THE JURY

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

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On the 29th day of June, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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P R O C E E D I N G S

THE COURT: This hearing is being conducted in open court, outside the presence and hearing of the impaneled jury. Continuation of a Rule of Evidence 705 hearing.

Mr. Davis, you may continue.

GILDA KESSNER

was called as a witness by the State and, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Davis:

Q. Dr. Kessner, at the first 705 hearing, you told me what opinions that you intended to express to the jury. Do you anticipate expressing any additional opinions?

A. Any change? No.

Q. Okay. You told me who you had interviewed. Have you interviewed anyone since the last 705 hearing?

A. No.

Q. Have you reviewed any additional literature?

A. I've re-reviewed the literature I had. I've gotten some information on mental health issues in the TDCJ system. I also reviewed a report from Terrell State Hospital when he was denied admission.

Q. What was the date of that?

A. That was June 16, 1998.

Q. Have you re-interviewed the defendant?

1 A. No, I have not.

2 Q. So you've done no more interviews. You've told me
3 about the literature that you reviewed. You conducted --
4 besides looking at the records from TDCJ, have you reviewed
5 any additional records, done any further research?

6 A. No. I mean, there's new literature that comes out
7 all the time. There was an article the other day, but I just
8 skimmed it. I didn't bring it with me.

9 Q. Okay. Are you going to be relying on it?

10 A. Not for my conclusions.

11 MR. DAVIS: I'm ready.

12 THE COURT: Defense ready for the jury to
13 return?

14 MS. LITTLE: Is our machine working?

15 THE WITNESS: No. It's upside down and
16 backwards.

17 THE COURT: How long will it take the
18 technician to get here?

19 MS. LITTLE: He is at Irving Boulevard and
20 Wycliff from here, so it's a straight shoot around the corner
21 so he should be here any minute.

22 (Recess taken.)

23 THE BAILIFF: All rise.

24 THE COURT: Let the record reflect the jury is
25 returning to the courtroom at this time.

1 (Jury returned to the courtroom.)

2 THE COURT: Jurors may be seated.

3 Counsel, Mr. Murphy, visitors in the gallery, you
4 may be seated.

5 Ladies and gentlemen, this witness has been sworn
6 in. She is under oath.

7 MS. LITTLE: May I proceed, Your Honor.

8 THE COURT: You may.

9 GILDA KESSNER

10 was called as a witness by the Defendant and, after having
11 been first duly sworn, testified as follows:

12 Direct Examination

13 By Ms. Little:

14 Q. Would you state your name for the record, please,
15 ma'am?

16 A. Gilda Kessner.

17 Q. Dr. Kessner, what kind of work do you do?

18 A. I'm a clinical and forensic psychologist with a
19 private practice in Dallas County.

20 Q. What is your educational background?

21 A. I have a Bachelor's degree in social work from
22 Abilene Christian University, a Master's degree in human
23 relations in business from Amber University in Dallas, and
24 doctor degree of clinical psychology from Baylor University
25 in Waco.

1 Q. Have you had training, aside from your degrees, that
2 you've worked at to fulfill your career? What kind of work
3 have you been doing?

4 A. Well, part of my internship involved working at the
5 state hospital in Arkansas which included a forensic
6 inpatient psychiatric unit where they did evaluations for
7 court for competency to stand trial and mental state at the
8 time of the offense. I also did three practicums while at
9 Baylor, one at the University counseling center with college
10 age students, one at Hardin, Texas, MHMR which involved
11 chronically and acutely psychiatrically ill patients from the
12 community, and one at the Waco VA Medical Center which was --
13 included an Acute Psychiatric Unit, and all -- or dementia
14 type of unit and posttraumatic stress disorder. In addition
15 to that, I attend conferences as required for continuing
16 education. I've also worked at the Texas Youth Commission at
17 two of their prisons and Dallas County Juvenile Probation.

18 Q. And are you licensed here in Texas?

19 A. Yes, I'm a licensed psychologist.

20 Q. Let me ask you, Dr. Kessner, if you're here because
21 of the special issues that are in the death penalty statute
22 here in Texas?

23 A. Yes, that's why you contacted me.

24 Q. And specifically Special Issue Number 1, are you
25 familiar with that?

1 A. Yes.

2 Q. And what does that issue relate to?

3 A. That probability that someone will commit acts of
4 violence in the future that would constitute a threat to
5 society.

6 Q. In regard to this, you realize that Jim Murphy or
7 Jedidiah Isaac Murphy is our client, who the State is seeking
8 the death penalty on?

9 A. That's correct.

10 Q. What did you do -- did you get some records that you
11 looked at to help you see what the overview was in this case?

12 A. Yes, I reviewed numerous records from him. I can
13 list them if you want.

14 Q. Yes.

15 A. Dallas County Jail incident reports; medical and
16 psychiatric records; Criminal Court Number 8 examining trial
17 transcript; Van Zandt County Children's Shelter Board;
18 Timberlawn Mental Health System; Dr. Richard Rasco, M.D.,
19 psychiatrist; Glen Oaks Hospital; Sabine Valley Center;
20 Substance Abuse Services Center; Oak Haven, Dallas Morning
21 News articles from October of 2000; Van Zandt -- Kaufman
22 County Sheriff's Department records; Van Zandt County
23 Department of Community Supervision and Corrections; Van
24 Zandt County Sheriff's Department; Van Zandt Community
25 Counseling Center; Van Zandt County Adult Probation; Garland,

1 Texas Police Department records; Wills Point, Texas Police
2 Department records; Bowie County Department of Community
3 Supervision and Corrections; Dallas County Department of
4 Community Supervision and Corrections; Dallas Police
5 Department; Terrell Police Department; Arlington Police
6 Department; Wichita Falls, Texas Police Department; Edgewood,
7 Texas Police Department; Texas Department of Public Safety
8 Computerized Criminal History Summary; TDCJ case summary;
9 Edgewood ISD, and Terrell State Hospital records.

10 Q. Okay. Now, since we're concentrating on Special
11 Issue Number 1, what did you do to prepare for your testimony
12 today?

13 A. Well, I also interviewed the defendant, Mr. Murphy,
14 on May 28th for approximately four hours at the Dallas County
15 Jail. I reviewed the records and I reviewed the literature
16 relating to this issue -- professional literature. And in
17 addition I also reviewed some Texas Department of Criminal
18 Justice public information.

19 Q. So essentially you're here to talk about risk
20 assessment; is that correct?

21 A. That's correct.

22 Q. Tell the jury a little bit about that, please.

23 A. Well, it involves, as I said reviewing the
24 literature and the records and ideally interviewing the
25 defendant so that you can get an opportunity to have a

1 firsthand look at how they're adjusting to their
2 circumstances and their jail incarceration.

3 Q. And how is that done? Who does the research?

4 A. The research is done generally by university
5 associated individuals, psychologists, sociologists,
6 criminologists, individuals -- individuals who are interested
7 in human behavior, public policy, social issues.

8 Q. And are these studies done that apply to things
9 other than what you're here about today, which is risk
10 assessment? Risk assessment like actuary tables and things
11 of that nature?

12 A. Right. Well, they do the research and publish in
13 professional journals on a broad spectrum of issues related
14 to risk assessment. Everything from mental health to
15 correctional offenders and issues related between opportunity
16 for correctional officials and others to be able to identify
17 risk, so the literature covers broad spectrum. I'm trying to
18 identify which factors are most predictive risk and in what
19 type of context.

20 Q. And is -- and is actuarial table work essentially
21 the same thing as risk assessment in this forum?

22 A. It is the fundamental method -- it's a very
23 important method in using -- that you should use in
24 predicting long-term risks over a long-term period of time.
25 If you're going to evaluate someone for suicidality, you use

1 a different method because you're looking at short-term
2 risks, but if you're looking at future danger, you're going
3 to look over essentially a lifetime or -- extended over
4 decades of time if you're looking at the prison system. And
5 so the actuarial is a foundational method.

6 Q. And you've brought some -- I would have to call them
7 slides, but you brought some information with you today?

8 A. Yes.

9 Q. To help you explain to the jury what we're talking
10 about; is that correct?

11 A. Yes.

12 Q. And do you have your copy there, and are you ready
13 to see if that machine works? Is it working? Got one up
14 there?

15 A. Just a second. The first one is up there.

16 Q. Okay. And that I think -- I hope says the question
17 of future dangerousness to society in capital cases; is that
18 correct?

19 A. That's correct.

20 Q. Would you explain what's on that sheet?

21 A. This is just basically what we've been talking
22 about, the issues that are relevant when you're looking at an
23 individual to try to determine or make some reasonable
24 informed conclusion about their future risk, and so you're
25 going to look at individuals who have been in a similar

1 situation in prison. Of course, the death penalty statute is
2 important to know about, the nature of science, how you
3 gather information rather than just making a guess, the
4 lit -- professional literature has published articles of
5 individuals who have been on death row and have had their
6 sentences commuted and placed in the general population. And
7 then you would want to look also at general information on
8 inmate populations across the country. And then there is the
9 application of the violence risk assessment methods that we
10 were discussing, and one reason why -- there has been --
11 recently there's been a flood of publications and it's
12 because of the expansiveness of the death penalty and
13 allegations of future dangerousness, even in federal cases.

14 Q. So the application of violence risk assessment is
15 the particular method that you used. That would be the next
16 to the last one; is that correct?

17 A. Right.

18 Q. And the historical information is all this
19 literature?

20 A. Yes.

21 Q. How far back does this literature go, Dr. Kessner?

22 A. Well, there's some information on certain aspects of
23 it back into the 1800's. It started being published in
24 professional journals in this country that I'm aware of in
25 the early 1900's and continues up to today.

1 Q. Are we ready to go to the next one? That appears to
2 say "risk components." How do you assess risks, Dr. Kessner?

3 A. Well, you have to understand what you're talking
4 about rather than just looking -- You have to define what
5 you're talking about. That's one thing that we also see in
6 the literature was that it becomes -- as it becomes more
7 current, the definitions, the specifics become more
8 comparatively defined rather than simply just descriptive,
9 but what you're looking at is what's the probability of
10 violence, so we're going to have to frame it. What's the
11 probability? What type of violence are we talking about?
12 What time period are we referring to? As I mentioned
13 earlier, we're talking about somebody being suicidal today
14 and tomorrow we're talking about a lifetime of risk or
15 violence. And in what context are we talking about? What
16 environment?

17 Q. And what did you assess in terms of Jedidiah Murphy?

18 A. Well, what I'm looking at here is the -- since he's
19 been convicted of a capital crime where he has a capital life
20 term of 40 years minimum in prison, and I did develop through
21 the literature -- the most recent literature a probability
22 which is 23.8. It's a range, 23.8 to 29.1 percent
23 probability of risk of serious violence over the course of a
24 capital life term. And then we can show how I came to that.

25 Q. Okay. Next. Now, this is talking about risk

1 components and areas other than what we're about here today,
2 right?

3 A. Right. This is just like a reference point to show
4 that this is something -- it's not just used by psychologists
5 in capital murder trials. It's also used in other arenas.
6 It's a scientific method that's used for other types of risk,
7 and it's what the insurance companies use when they assess
8 your premiums.

9 Q. Okay.

10 A. They don't know you. They put you in category. And
11 then once they have -- they are more familiar with your
12 personal history, then they can revise your category and your
13 premiums. So basically it's essentially the same thing as
14 when they -- your 16-year-old son or daughter starts to drive
15 and they're going to determine what their risk is. They look
16 at the same factors.

17 Q. Okay. Next picture. What are the risk assessment
18 techniques?

19 A. This is what we were referring to before. There's
20 different methods that you can apply, and they range from
21 more scientific to less or least scientific. Actuarial is
22 one that we've just been looking at. It's the most
23 scientific method when we're talking about long range
24 predictions.

25 Then there is the pattern or anamnestic method which

1 the phrase that people often hear, that past behavior is the
2 best predictor of future behavior. But when we're looking at
3 this, we also want to take into account the context because
4 that saying is not necessarily true unless we look at the
5 context. And then there's intensive clinical evaluation
6 which is what mental health professionals often use when they
7 are assessing someone for risk to themselves, someone who
8 might be suicidal, severely depressed, or psychotic. They're
9 going to use different -- they're going to use a short-term
10 model, the personality, the support system, that type of
11 information to make a decision. And then the least
12 scientific is just taking a hypothetical and making an
13 assumption at the end.

14 Q. Okay. That's normally done how?

15 A. A hypothetical? Well, you can give someone some
16 information and then ask them to make a conclusion based on
17 whatever -- if they're a professional or if they're not a
18 professional, but based on their own life experience.

19 Q. Okay. Next.

20 A. I was just going to say the risk to that is
21 something that's called the illusory corollary which things
22 that we think are important in making a decision may not be
23 scientifically valid and may not actually be what is driving
24 the outcome. And so that's the risk there.

25 Q. That's why that's the least scientific?

1 A. That's one factor why it's very unscientific, yes.

2 Q. Anything else?

3 A. (Nods head.)

4 Q. Next.

5 A. I'm sorry, this one is kind of small.

6 Q. Okay. This is models of violence risk assessment.

7 A. These -- this is just how this information has been
8 written about in the literature, and this is back into the
9 1980's. But it is referenced even earlier than that. And
10 these are just four different sets of authors who are
11 referring to using the actuarial method in making long range
12 predictions about behavior, in particular in violence risk.
13 And they're using actuarial -- or if you can see, there's a
14 term in red for each one of these. And like this is
15 referring to the base rate, which is important in looking at
16 actuarial prediction. They're all referring to actuarial or
17 base rate as important in long range violence predictions
18 which they say right here. Best estimated by the base rate
19 of violence in the group to which the individual belongs.

20 Q. Okay. So these are just people who have done
21 research in this area?

22 A. Written about the statistical methods in using and
23 making predictions.

24 Q. Okay. Name some of those if you would, so it's not
25 easy to see.

1 A. Monahan has written extensively. He's done a lot of
2 writing also about mental health risk. Morris & Miller,
3 Hall, and Serin & Amos.

4 Q. And what is a base rate?

5 A. The base rate is considered to be the most
6 fundamental piece of information that you need in order to
7 make a prediction. The base rate is considered to be the
8 most fundamental piece of information that you need in order
9 to make a prediction. Otherwise, it's like being out at sea
10 in a fog with no compass. You're just making a guess. The
11 base rate is how often something happens. It's a
12 prevalence. For instance, the prevalence of depression in
13 the population in general versus the prevalence of depression
14 in a hospitalized sample. So you're going to have less
15 prevalence in the population, more in the hospital sample,
16 and very often in psychiatric and medical, prevalence is
17 yearly or a lifetime risk such as breast cancer being every
18 woman -- every female born today has, for instance, about an
19 11 percent or 12 percent risk -- I think it's the latest I've
20 heard, and that means over the course of a lifetime which is
21 80 years and that's the probability that any person would get
22 that. So that's the base rate. And then -- but we're
23 looking in this particular type of case for Mr. Murphy, the
24 risk of violence. What is the base rate and eventually
25 we'll -- that number that I gave earlier will show how I

1 reached that number.

2 Q. Okay. And what about the fundamental group
3 statistic?

4 A. That is the base rate.

5 Q. Okay.

6 A. That is your foundation.

7 Q. Okay.

8 A. In other words, you have a group and you take an
9 individual and you measure the individual by the group.

10 Q. Okay. Next. And what actuarial steps do you take
11 to glean this information?

12 A. This is just sort of general outline. You want to
13 identify the characteristics. Basically you want to define
14 what you're doing. You review the experience by looking at
15 that individual, looking at the historical record, establish
16 a base rate in the group -- in the larger group. Then you
17 want to look at the context, so if we're looking at violence
18 among the general population or we're looking at violence
19 among criminal defendants or offenders or inmates, then we
20 want to make sure we're looking at the right context. We
21 adjust the base rate for individual differences, just as they
22 would do for someone who is applying for car insurance.

23 Q. Uh-huh.

24 A. You get premiums for certain types of behavior and
25 training and, you know, if you don't have certain types of

1 restraints in your car, then it's different. And that's
2 where we get the preventive measures. We're going to adjust
3 in a capital case based on the context and preventive
4 measures that are applied for a capital defendant in prison
5 and then compare other base rates.

6 Q. Okay. What would be an example of some preventive
7 measures out in the world?

8 A. Well, in the world we have -- for instance, if
9 you're driving, you have police officers who drive in the
10 community, people always slow down. We have traffic lights,
11 people are using seat belts, air bags. There's talk now
12 about not using cell phones. Those are the types of
13 preventative measures. We're talking about psychiatric
14 patients. We're talking about support groups. We're talking
15 about case managers who monitor them on a frequent basis, if
16 they're chronically or acutely mentally ill, not eligible for
17 inpatient treatment for either lack of benefits or managed
18 care procedures. And if we're looking at an offender on
19 probation or on parole, then those organizations have their
20 methods also for preventive supervision.

21 Q. Okay. And those measures would be such as?

22 A. Similar to case management. Frequent contact with
23 the individual, making sure that they are participating
24 whatever classes they need to go to. If the person is --
25 needs to be in a halfway house, whether they're mentally

1 disordered defendant or offender or mental health patient.

2 Those are the types of things that would be considered.

3 Q. Okay. Next, please. Base rates relevant to
4 likelihood of violence in prison. Is that readable to
5 everybody?

6 A. I think so. The idea here is like we said, we want
7 to look at the context and so we're -- we're not going to
8 compare him to school boys who are fighting on the school
9 yard. We're going to look at a relevant group. We're going
10 to look at that fundamental group statistic and compare him
11 to that. And so also we're going to look at the base rates
12 as the statistics for that group as well as in general
13 assaults by inmates in Texas and other prison systems,
14 federal prison systems, homicide of inmates or staff in State
15 and federal prison. Disciplinary infractions. And here --
16 this is part of the context, whether it's short or long-term
17 imprisonment. That's important to the context. And
18 underneath that the research has established that age is one
19 of the most important factors. Fighting and assaults among
20 long-term inmates. The length of the sentence -- age of the
21 inmate and the length of the sentence are just very important
22 factors in determining this information.

23 And then base rates on aging effects of criminality
24 and violence in general. So those are important pieces of
25 information to someone that has a long-term sentence.

1 Q. Would you go ahead briefly now and talk about the
2 difference between short-term and long-term inmates from the
3 research?

4 A. The difference between long-term and short-term
5 inmates, as demonstrated in the research, indicates that when
6 someone receives a sentence, they begin the psychological
7 process of adapting to that sentence, whatever it's going to
8 be. And in -- there's research that's done by an individual
9 named Flanagan who compared greater than 5 years, less than 5
10 years, and the level of rule infraction, based on age at the
11 time of admission, and got some remarkable results with that.

12 Q. All right. Now, I know I skipped, so can we go to
13 why this base rate applies to the Texas statute?

14 A. Okay. In particular to Mr. Murphy and capital
15 defendants in Texas, the research -- the literature has
16 information on defendants who -- across the country who were
17 determined -- their offense was determined to be particularly
18 violent so that they were given the death sentence and -- by
19 the jury. And so we have information on the outcome -- their
20 outcome in prison. From state to state inmate distribution
21 is similar. There are -- violent inmates make up about
22 almost half of the prison population across the country. And
23 that also prison facilities and procedures are consistent
24 across the country.

25 Q. Uh-huh.

1 A. They have the same kinds of standards and -- and
2 they have research and they have methods that they apply and
3 they're not reinventing the wheel from state to state as far
4 as official policies and procedures.

5 Q. Uh-huh.

6 A. And then we also have the fact that the findings in
7 the research are consistent from state to state across -- in
8 other words, we have different geographic regions. We have
9 different time periods. I mentioned earlier some information
10 from the 1800's. Diverse prison settings, we're talking
11 about Texas and other states in federal systems. Diverse
12 capital statutes. The wording is different in the different
13 states. And this might be different. And then diverse
14 capital offense characteristics, whether there is a one
15 victim, multiple victim, young, old victim, what type of
16 weapon is used. In other words, that the outcome for these
17 offenders in research is consistent across all of these
18 different factors.

19 Q. Okay. Next. Tell the jury what Furman is, Dr.
20 Kessner.

21 A. Furman is -- was a case in the early 70's, and it's
22 referenced in the literature quite extensively where the
23 Supreme Court at that time declared that the death penalty as
24 it was utilized was unconstitutional. So there were people
25 across the country who were on death row who were then --

1 they had their sentences commuted and remained in prison for
2 the most part and were put into the general population. So
3 there were some individuals -- Marquart is from -- Marquart
4 and Sorensen, I believe, were from Sam Houston State at the
5 time.

6 Q. These are the men that did this study?

7 A. That did this study and reviewed records and have
8 reported in professional literature on the findings. So they
9 looked at violence among these offenders after they were
10 admitted to the general population because the prediction was
11 they would wreak havoc, they would be predatory against
12 inmates and guards as a group, entirely as a group.

13 Q. So you have here 533 former death inmates across the
14 nation?

15 A. They had -- remember, I said earlier about -- they
16 had to define things? What they did is they took those who
17 were already on death row, not in jail waiting to go --

18 Q. Uh-huh.

19 A. -- but they -- they -- there's different lists of
20 offenders that were available, and they refined based on
21 those who were on death row at the time.

22 Q. All right. And then looked at the behavior over a
23 15-year period after their removal from death row?

24 A. Right.

25 Q. What were the results of that study?

1 A. Well, the majority had no serious violations. They
2 looked at assaults against guards, weapons with assaults
3 against inmates. Now, there's a small group, about 7
4 percent, who had the majority of the violations. It says at
5 least three or more. And even among that group there's a
6 small minority who had excessive and the most violations,
7 whereas you might have one individual in there who had three
8 or four, you might have one individual who had 12 or 13
9 violations. That's one of the things that we know in
10 behavior is that any type of behavior, violence, other types
11 of behavior, there's a small group out of the total that is
12 at the extreme ends of the behavior. We know that about
13 intelligence -- we're not all intelligent. We're not all the
14 smartest, and we're not all the least intelligent, but most
15 of the time huddle in the middle. And what we have here is
16 the majority of the people did not break the rules. We had a
17 small group that had one violation and a small group that had
18 the majority of the violations.

19 Q. Okay. And even within that small group, a smaller
20 group was repetitively bad?

21 A. Right.

22 Q. And that wasn't even all of that 7.4 percent of
23 chronic rule violators?

24 A. Right. It would be like 10 violations or more among
25 that group.

1 Q. When you say 69.5 percent had no serious violations,
2 what do you mean by that?

3 A. Talking about serious -- serious rule violations,
4 violence, or forming a riot or something along those lines.

5 Q. Okay. Next. Okay. This was a comparison, was it
6 not?

7 A. This is a population that's extracted out of the
8 bigger population. This is Texas, and that's not unusual.
9 You have a large population. Then you want to see if a
10 smaller population has the same kind of result or if there
11 might be a difference, say, in Texas versus nationwide.

12 Q. Uh-huh.

13 A. And so they had individuals who had received a
14 sentence of death and were commuted and those are the
15 Furman. And then they had individuals who were capital
16 offenders but had received a life sentence, and they used
17 them as a control group, as a comparison group.

18 Q. So you had 47 death row commutees, right?

19 A. Right.

20 Q. And 156 life sentence inmates?

21 A. Yes.

22 Q. Which included very, very serious crimes?

23 A. Yes. Essentially I think both groups also included
24 murder, rape, and burglary or robbery.

25 Q. Okay. And then their ages are approximately the

1 same?

2 A. Yes.

3 Q. 32 to 30, the other group. And they were followed
4 for a number -- 11 years. 10 years in one, and 11 in the
5 other; is that correct?

6 A. Right.

7 Q. And what were the results of that?

8 A. Well, among -- among this group at the time of the
9 study there were no prison homicides. I believe -- right.
10 That's correct. There were no prison homicides. And among
11 each group there were -- among those who had serious rule
12 violations, that's the gray part, each group had among the
13 gray part had 14.3 serious rule violations. So essentially
14 what this is showing is that there's no difference between
15 these two groups of people as far as their level of violence.

16 Q. In prison?

17 A. In prison. 70 percent of the life sentence inmates
18 did not have serious rule violations. 75 percent of the
19 Furman commuted inmates did not have serious rule violations.

20 Q. Okay. And what about aggravated assault and
21 fighting with a weapon?

22 A. Again, we have no difference between the groups, 90
23 percent of the life sentence and 92 percent of the death
24 sentence commuted, inmates did not have those offenses in
25 prison. So that's actually -- separate and apart from the

1 fact that there is a small group --

2 Q. Uh-huh.

3 A. -- that does have this extreme behavior, the second
4 most important thing about this slide is that among this
5 group there are -- there are no differences.

6 Q. Okay.

7 A. One was -- one group was given a death sentence, the
8 other was given life.

9 Q. And this was a replication -- again, that came out
10 of the University of Texas?

11 A. Yes.

12 Q. Next.

13 A. This is a more recently published study referring to
14 Indiana commuted capital offenders since 1972. They went in
15 and looked -- this is by Cunningham and Reidy, I believe, and
16 they went in and looked at the records in that system and
17 they had 39 inmates. They were in the general population.
18 And as you can see, 74 percent had no homicide, no assault,
19 or fight. 62 percent were never put in administrative
20 segregation in the prison system.

21 Q. Okay. And that doesn't actually reflect -- that
22 reflects serious -- from medium to serious.

23 A. In other words, when you're admitted to
24 administrative segregation, it's for either your protection
25 or somebody else's protection, some kind of problem that you

1 need to be segregated.

2 Q. What is administrative segregation, Dr. Kessner?

3 A. It's essentially a tighter security within the
4 prison itself.

5 Q. Okay. Next. This is another Marquart study; is
6 that correct?

7 A. Marquart, Ekland-Olson, and Sorensen study, yes,
8 1989.

9 Q. And that article is called what?

10 A. "Gazing into the crystal ball: Can jurors
11 accurately predict dangerousness in capital cases?" Law &
12 Society Review is where it was published.

13 Q. Okay. Tell us about this chart.

14 A. Well, this is in Texas, and I believe they looked
15 at -- this is 1986, was the year of reference, yes. They
16 had -- and this is Texas.

17 Q. Uh-huh.

18 A. They had 90 inmates who had been on death row and
19 were commuted, and this is not Furman inmates. These are, I
20 believe, other inmates.

21 Q. Okay.

22 A. Okay. And then they also had capital offenders who
23 were sentenced to life. Those are the two -- the red and the
24 green --

25 Q. Okay.

1 A. -- on the chart.

2 Q. Okay.

3 A. And then they had the Texas system itself, system
4 wide. And at that time, 1986, 1985, they had under 40,000
5 offenders in the Texas Department of Corrections. And then
6 they made -- so these are all comparison groups. Well,
7 actually the death -- released or commuted death row inmates
8 are the group of interest, and then the rest are all
9 comparison groups.

10 Q. Okay.

11 A. And so then they also had a high security facility
12 called the Darrington Unit that they also used as a
13 comparison group. And what they did was they look at the
14 records for reported serious rule violations among these
15 groups to see who had the most essentially. And what they
16 found was that the life -- the capital life sentence
17 offenders and the commuted death row offenders had the lowest
18 rate of infraction.

19 Q. How do you in explain that? Can you explain that?

20 A. Well, as I said, very often given long-term
21 sentences, and so they -- they adjust, they settle in knowing
22 that this is going to be their existence. And as they age in
23 prison, that's a factor.

24 Q. Okay.

25 A. Aging has a major factor on behavior.

1 Q. And what constitutes a person getting into the high
2 security? Would that be gang activity?

3 A. That could be gang or other types of violence, not
4 gang related, but other types of violence in the prison
5 system.

6 Q. Next. I jumped the gun, didn't I? You titled this
7 "A Few Bad Apples." Tell the jury about this sheet.

8 A. That basically is the gang. In other words, out of
9 the commuted death sentence and the life sentence inmates,
10 there were some bad apples in both groups. They identified
11 them and they put them in administrative segregation to keep
12 them from being able to hurt anybody. So there were -- in
13 both groups they found some people that might constitute a
14 threat, and they secured them.

15 Q. And that was 8 out of 90 or 6 out of 107 --

16 A. Yes.

17 Q. -- versus two-thirds of both groups. What was
18 there?

19 A. Two-thirds of both of those groups had never been in
20 solitary confinement or an administrative segregation type of
21 setup.

22 Q. And 90 percent of both the former death row inmates
23 and the life sentence inmates had trustee status; is that
24 correct?

25 A. According to their records, which would indicate

1 good behavior to allow them to have some responsibility in
2 some area of the prison.

3 Q. Okay. Next. Now, this is a disciplinary review
4 record from 1977 to '92; is that correct?

5 A. Right, this is Missouri.

6 Q. Okay.

7 A. Interesting thing about Missouri is they house their
8 death row inmates in the general population. At least at the
9 time of this publication in '96 they didn't have a separate
10 death row.

11 Q. We do have, though?

12 A. We do have. But in Missouri they do not. They were
13 able to compare three different groups all in the same
14 setting. And -- in other words, these individuals were still
15 under sentence of death at the time. They had not been
16 commuted. So they had 93 death row inmates, 323 life without
17 parole inmates, 232 life with parole inmates. And what they
18 found, interesting -- interestingly in the first three years
19 the death row inmates had the best behavior. After three
20 years, there was no difference in groups. All of the life
21 with parole inmates had one infraction. And 78 percent of
22 both groups had no assaults whatsoever.

23 Q. Okay.

24 A. So again, they looked at all the three years, but
25 then they found essentially no differences so they pooled the

1 results.

2 Q. And that was regarding -- in all three groups there
3 were no differences regarding assaultive behavior?

4 A. Right.

5 Q. Okay. Next. Now, this is a New Jersey study; is
6 that right?

7 A. This is a -- from New Jersey in the earlier --
8 earlier part of the 1900's. As I said, we have changes --
9 the research becomes more refined, but basically what he did
10 was he looked at records of New Jersey capital offenders.
11 There were 34 who had received a commutation, and 21 had a
12 retrial and then placed back in the general population. So a
13 total of 55 were released from death row between 1907 and
14 1960. And when he was reviewing these records, there were no
15 allegations of any unmanageable behavior, anything that would
16 have constituted an unmanageable threat, a serious threat.

17 Q. None at all?

18 A. Right. Of course, as I said earlier, that -- the
19 definition there is different from what the later studies
20 used.

21 Q. And what was -- do you know the definition then?

22 A. No, what I'm saying is that his -- in other words,
23 they -- they were not as refined, but still there was no
24 information about unmanageable behavior.

25 Q. Okay. I see. Okay. Next. This is Texas

1 capital -- capital offenders; is that right?

2 A. Correct.

3 Q. And it's regarding the prison behavior of those
4 people. Actually this is a pre-Furman, before the death
5 penalty statute went out and got changed later; is that
6 right?

7 A. 1924, I believe, Texas imposed -- had the imposition
8 of the death penalty. And so what they did in -- between
9 1924 and 1972 pre-Furman, there were a hundred people
10 commuted from death row. And they looked at the records that
11 were available from the Texas Department of Corrections to
12 see what they had here and they were -- it's a nice round
13 number, a hundred, 80 percent had no violent infractions.

14 Q. Okay. So far, the numbers are staying the same from
15 number to number; is that correct?

16 A. Essentially we're looking at 80, 78, 80, sometimes
17 up to 90 percent, you know, depending on the definition, who
18 are not having a problem. And that's the interesting thing
19 about -- from early 1900's to late 1900's we're seeing the
20 phenomenon, the same type of behavior in a group of people
21 who are violent, very violent in the community, and they're
22 under restriction in the prison system. And we see that
23 as -- from study to study, with different authors in some
24 cases, or authors added, we're seeing that the results are
25 replicated.

1 Q. Okay. Now, let's go to the next one.

2 A. Okay. Also, it's noted here that there was no
3 inmate on officer violence among those who were violent.

4 Q. Okay. No inmate on officer violence?

5 A. Yes, in this group.

6 Q. Okay. This is a federal prison confinement study?

7 A. This is a small study that was done. What they
8 wanted to do was find out about how well professionals in the
9 system could predict violent behavior. And they had
10 psychologists and they had correctional officers. And they
11 used a system of reviewing information that would ordinarily
12 be available in the prison when they get a new inmate. They
13 didn't actually interview these people, but they looked at
14 the records and they gave information about offense history
15 and escape history and juvenile history, that sort of thing.
16 And then they asked them to rate these individuals, give a
17 probability that they might be a danger, and also to rate
18 their own confidence level. And then they wanted to see what
19 actually -- what these individuals actually did, so how close
20 these people were. Okay.

21 Q. Okay.

22 A. And what they found was that neither group was all
23 that good in predicting.

24 Q. And the two groups were what again?

25 A. Psychologists and correctional officers.

1 Q. Okay.

2 A. And one of the reasons why they weren't so good is
3 it says in the article they didn't have the base rate. They
4 didn't understand the base rate. They were just using
5 offense characteristics and other types of information to
6 make their decision, but what they found as far as what --
7 what they're looking at here -- what they found was they
8 wanted to predict who's going to be violent within the first
9 six months which is an adjustment period.

10 Q. Okay.

11 A. And what they found was that the younger the inmate,
12 and if they had not resided in a major city, if they were
13 from more a rural environment, and those who had more prior
14 arrests and convictions were more likely to have some problem
15 with adjustment. I believe the study also indicated that the
16 base rate for that group, with that time frame, was 10
17 percent. 10 percent was going to have a problem. And they
18 made their -- the individuals that were in the study, the
19 psychologists and correctional officers looked at the offense
20 history, the characteristics of the offense, that sort of
21 thing to make their -- their prediction. And they were wrong
22 in their predictions, generally.

23 Q. Okay. This is your average number before the jury
24 now of the prison rule violations per inmate per year by
25 offense in 1986; is that correct?

1 A. This is just some more information to show in
2 general statistics about prison. What this is showing --
3 just prison rule violations per year, and they have a break
4 down of -- general break down of the type of offense. And we
5 see highlighted total, violent offenses, property offenses,
6 drug offenses, and public order. And the property offenders
7 had the highest rate of prison rule violations. This is from
8 1986. We're not talking about 2000, but we've already looked
9 at the early 19 -- we're looking at all across the century.

10 The homicide offenders, when they divided them out,
11 they had .9. The manslaughter offenders had .8. Violent
12 offenders, when you include assault, robbery, and rape, as a
13 total group had 1.4 --

14 Q. Okay.

15 A. -- rule violations. And this is a nationwide
16 sample.

17 Q. And these are people that are in prison for these
18 specific offenses that are enumerated here?

19 A. Right.

20 Q. So the lowest people are the homicide, manslaughter,
21 and drug offenders?

22 A. Yes.

23 Q. Okay. Will you tell the jury about this -- I keep
24 wanting to call it a slide. What do you call that?

25 A. A slide.

1 Q. Okay. Good. Thank you.

2 A. This is -- this is just a little summary of what we
3 looked at so far, some of the research we've looked at. Is
4 past violence in the community does not strongly or
5 consistently predict violence in prison. Because we've been
6 looking for the most part, except for this last part,
7 everybody had been violent in the community. Okay.

8 Q. Okay.

9 A. And that the current offense, according to this
10 federal -- this small federal study we looked at, the current
11 offense, escape history, prior convictions are weakly
12 associated with prison misconduct. And they did use -- one
13 cues they gave the psychologists and correctional officers
14 was escape history. And it was not statistically
15 significant. And then also severe -- excuse me.

16 Q. Do you have enough water?

17 A. Probably use a little more.

18 (Water given to witness.)

19 Q. (By Ms. Little) Are you okay?

20 A. I think so.

21 In general we've seen the severity of the offense is
22 not a good predictor.

23 Q. Okay.

24 A. Because essentially if you would say, yes, a hundred
25 percent of the time, you would be wrong between 80 and 90

1 percent of the time probably.

2 Q. There is very little association of prison
3 misconduct with the current offense or even priors?

4 A. Correct. I'm sorry.

5 Q. Are you okay?

6 A. (Nods head.)

7 Q. Okay. The next sheet. I think I don't have all of
8 that. This is the rates of assaults in TDCJ in 1998. I
9 certainly can't see that far, so will you --

10 A. Okay. The first is -- this is per hundred inmates,
11 and this is for 1998. First of all, 98 percent of the
12 inmates did not commit an assault, were not assaultive.
13 Actually we're looking at events in this -- there's -- TDCJ
14 puts out emergency action statistics which are events. So
15 this number, 98, could actually be a little larger because
16 this is recording the events of assault that occurred. But
17 the first column, which is very small, is inmate on inmate
18 which is 1.05 per 100 inmate annually for that year.

19 Q. Uh-huh.

20 A. The second one is inmate on staff which is 1.16 per
21 100 inmates.

22 Q. Let's take a minute here. Okay. Next one. Okay.
23 The base rate of inmate and staff homicide. Is that in the
24 general population?

25 A. This is from the Sourcebook of Criminal Justice.

1 They put this out about every five years, and they do
2 statistics on all state prisons, parole, probation, juvenile,
3 just in general, and the federal system. And for 1995 it
4 shows inmate on inmate homicide in these various systems. 7
5 per 100,000 in the federal. Nationwide in the state prison
6 is 5.6 per 100,000. In the Texas system, 3.9 per 100,000.

7 Q. And this is homicides?

8 A. Uh-huh.

9 Q. Okay. What about inmate on staff?

10 A. In the federal system 1 per 100,000 inmates. In
11 state systems nationwide 1.1 million. In Texas for 1995
12 there were none. In the last 18 years there have been two,
13 one in 1982, one in 1999, inmates killing correctional
14 officers.

15 Q. Okay. Okay.

16 A. And then down at the bottom is a comparison of the
17 general population of violence in -- murder in the
18 community. Murder and non-negligent homicide. In the United
19 States there were 8 per 100,000; in Texas 9 per 100,000;
20 Houston, 18.2 per 100,000. Then at the bottom for age 65 and
21 over 1.1 per 100,000. So there you see evidence of the aging
22 affect on violence.

23 Q. There's a significant drop as people age?

24 A. Right. It's not that it doesn't happen, but it
25 drops off significantly almost to baseline.

1 Q. Almost to baseline?

2 A. Uh-huh.

3 Q. Next page. Now, this is a showing distribution of
4 short and long-term broken down by offense types; is that
5 right.

6 A. This is the Flanagan information I mentioned
7 earlier. This is from 1979. Essentially homicide offenders
8 make up a large proportion of the long-term inmates. Robbery
9 offenders, while some of them are short-term, still there's a
10 large percentage that make up long-term, so violent offenders
11 are more often going to be long-term inmates.

12 Q. Okay.

13 A. This is from a dissertation.

14 Q. Okay. And the next one is Disciplinary Infraction
15 Rates?

16 A. This is the age at admission affect. Again, we're
17 looking at Flanagan's information. He's looking at long and
18 short-term inmates. And as you can see, these are the
19 short-term inmates. These are the long-term inmates. So
20 even --

21 Q. The purple line is the short -- is the long-term?

22 A. The purple and the pink -- pink is the long-term.

23 Q. Okay.

24 A. Even at the younger ages where there's a higher risk
25 for aggressiveness and violence, there's a big difference,

1 3.5 infraction versus 1.5, if you're coming in as a long-term
2 inmate. And then in the early 20's after around age 21 or.
3 so, 22 -- excuse me, 22, it's going to start dropping. As we
4 can see here, it drops -- it starts to drop from both groups
5 and around 40 it's less than -- starting to be less than 1, 1
6 or less, and by age -- over 40, we're dropping down to .5
7 infractions for -- for both groups --

8 Q. Okay.

9 A. -- at time of admission. These are ages at
10 admission.

11 Q. And these ages at admission and length of time
12 incarcerated, that has a bearing on risk, even in the
13 community, does it not?

14 A. Well, yes it would. Yes, it would. The reason is
15 if you're young when you're admitted and you're in there for
16 a long time, you're old when you come out.

17 Q. I don't have anymore of these. Do you have some
18 more?

19 A. You should have some more, yes.

20 Q. Okay. Just go ahead to the next one. Okay.

21 Disciplinary Infraction Rates. Is that where we are now?
22 No.

23 A. Yeah, that's where we were.

24 Q. These are the ones you added. Are these the ones
25 you added?

1 A. No. Do you want this stack?

2 Q. No, go ahead. I can't see it, so go ahead and tell
3 the jury about it, if you will. I've got -- I pick up later
4 on, on Cunningham's study. Go ahead.

5 A. This is a graph. This is just to show the age
6 principle. And these are incidents of prison infractions.
7 This is New York in 1975 by age. And as you can see, the
8 peak is over age 20, and then it drops. Here we are a little
9 bit -- like around age 32. We're dropping again, and here we
10 are around age 60. A little bit of a pickup after that,
11 could be related to some type of health reasons or
12 something -- someone might be a little more aggressive, but
13 the idea here is that we see where the peak is. It's been
14 documented in the other literature since 1975.

15 Q. Since 1975?

16 A. This was 1975 in New York.

17 Q. Okay. Does that say Average Number of Prison Rule
18 Violations?

19 A. Yes.

20 Q. Go ahead.

21 A. Here again, it's the same principle as in 1989,
22 Bureau of Justice Statistics. They're talking about prison
23 rule violations. The peak is over ages 18 to 24, right up
24 here. And it drops again. Here's around age 30, between 25
25 and 34. It drops again, age 35 to 44. There's age 45 plus.

1 So we see the same effect. This is 1989. Year after year
2 we're seeing the same effect.

3 Q. It peaks and as they age it drops?

4 A. Yes, this is in prison.

5 Q. This is yearly violations?

6 A. Per year, per inmate by age.

7 Q. Okay. Next.

8 A. This is very faint, hard to see. But this top --
9 basically it's showing the same shape of the graph. In the
10 top graph is Wales in the 1800's. The peak is basically over
11 the same age bracket. This small little faint line down here
12 is women. So we see the peak. It's the same place, it's
13 just a very -- it's a much flatter graph. Up here we have
14 males. This is in the United States in 1970's. Again, the
15 peak is the same. This is -- I'd have to get it, I can't
16 even read it myself. I think it's violence in the community,
17 but essentially it's demonstrating the same principle that as
18 individuals age, they're less likely to be rule violators,
19 less likely to be violent, less likely to engage in criminal
20 behavior.

21 Q. Okay. Now we're to Arrests for Violent Offense and
22 Murder by Age Group?

23 A. Again, it's a little bit of a blip on the graph, but
24 we have the same concept back in the 20's, early 20's. We
25 have the highest rate, and it's going to drop off

1 significantly into the 40's and then it levels out. Here we
2 have 65 plus year. The blue or the darker line is murder and
3 non-negligent homicide or non-negligent murder --
4 manslaughter, excuse me. And the pink is any violent
5 offense. So that could be assault. So basically we're
6 looking at the same shape of the line, and this is published
7 in 1977, Sourcebook of Criminal Justice Statistics.

8 Q. Okay. Characteristics of State Prison Inmates. I
9 can read that.

10 A. Right. Remember, we talked on this first graph
11 about looking at characteristics of inmates in general as a
12 comparison group. So we see across the country that almost
13 half across are convicted of some kind of a violent offense.
14 About 12 percent -- this is 1991 -- have been or were in
15 prison for conviction on homicide, and 28 percent of those
16 had been under the influence of drugs. About 10 percent of
17 the prison population was sentenced to life. 74 percent in
18 maximum security had a current or prior sentence for a
19 violent offense. And here we -- we just see more information
20 about the prison population in general, that they've been
21 incarcerated in the past or had been on probation. Some had
22 convictions as juveniles. 70 percent had a prior conviction
23 as an adult, so they're just sort of showing the general
24 qualities of the prison population.

25 Q. Which is not a good place, period?

1 A. No, these are the base rates for who's in prison.

2 Q. Okay. What about this -- let's see, is there a
3 second page to that?

4 A. That's it.

5 Q. That even includes people who used a gun while
6 committing the offense there in prison?

7 A. 16 percent had or used or had a gun while committing
8 their current offense.

9 Q. Okay. How is the water holding out?

10 A. I could use a little more. Thank you.

11 Q. Okay. Go ahead and go to the next one.

12 A. So this is basically a summary, a narrative summary
13 of what we've been looking at again. Commuted capital
14 offenders had a very low rate of serious violent
15 infractions. The seriousness of the offense does not predict
16 prison violence. Texas prisoners have a low rate of serious
17 violence towards inmates and staff. Rates of inmate and
18 staff homicide in prison are lower than the general
19 population in the community. Violent offenders represent
20 almost half of the State prison population. Murders
21 represent over 11 percent of the State prison population. In
22 that last slide for 1991 they had 12 percent. Almost half of
23 long-term inmates are murderers. Disciplinary infraction
24 rates are lower for long-term inmates than short-term inmates
25 within each age-at-admission category. Infraction rates are

1 progressively lower as an inmate ages. This is consistent
2 with multiple studies which demonstrate a marked decreasing
3 rate of criminality and violence with aging.

4 Q. So a person who is in the penitentiary is in the 20
5 percentile range generally from all that you've said with the
6 consistent numbers -- not to be a future danger if they're
7 locked up in the penitentiary?

8 A. I didn't understand the question. Could you repeat
9 it?

10 Q. Well, the numbers we've talked about are 80/20,
11 80/20, and the decline in the age is a decline in violence
12 and trouble in the penitentiary. So the vast majority of
13 people, even though they're all criminals and many of them
14 are murderers, are not a future danger in the penitentiary?

15 A. They don't -- they do not act out in the
16 penitentiary, that's correct.

17 Q. Okay. Next slide.

18 A. There's a more recent study. This is another
19 summary, and it utilizes information of a more recent study
20 which I'm going to show some more information on that in a
21 minute. But basically this is a similar summary, but we've
22 got some anchoring base rates to show, so we're looking at
23 assault. You're seeing 20 to 30 percent are going to be
24 involved in some kind of assault. Repetitive assault is
25 about 10 percent. Aggravated assault on staff is going to be

1 around 1 percent. Homicide of an inmate by an inmate in
2 Texas is .2 per one thousand. And the State -- in the United
3 States State prison systems homicide of staff is 1 per 1
4 million annually.

5 Q. Are we to the next one yet? All right. Tell us
6 about the factors predictive of increased risk.

7 A. Sorensen and Pilgrim have published an article.
8 It's actually published now. I have it here with me. And
9 they took a Texas prison population, all convicted of murder,
10 because they wanted to refine this information that we've
11 been looking at a little more clearly. In other words,
12 they're working on refining the definition even further. And
13 so they looked -- they had a population of around 10,000
14 originally, but for the purposes of this study, it bore down
15 to about 6,390 murderers convicted between 1989 and 1999.
16 None of these were under the age of 17 because in Texas
17 you're not eligible for the death penalty if you're under
18 17. They wanted to get a group that was as similar to
19 capital offenders as possible. So some of these are life
20 sentence capital offenders or murderers who received life
21 sentences. And then they got their information and applied
22 their statistical procedures to get the results. And the
23 rates of serious violence are extrapolated for a life
24 sentence, so over a course of 40 years, capital life
25 sentence.

1 Q. A 40-year capital life sentence?

2 A. Right. Because they didn't follow these people for
3 40 years, but they -- they did a statistical process which
4 allowed them to extrapolate the information.

5 Q. Okay.

6 A. They looked at homicide, attempted homicide, assault
7 with a weapon, fight with a weapon, sexual assault, robbery
8 on an inmate. These are -- and they also looked at
9 aggravated assaults on a correctional officer. And they put
10 in information about the offender, everything from age,
11 education, socioeconomic status, mental health,
12 intelligence. They looked at their work history, all of
13 those kind of data, military history. They looked at offense
14 characteristics, so whether there was a weapon used, how many
15 victims. They looked at prior record, arrest record. They
16 looked at every bit of information about these individuals.
17 And then they also looked at prison records, rule
18 infractions, that sort of thing. And to see what was
19 going -- because what they were looking for was what was
20 going to predict who was going to be violent. So this is
21 what the -- after they did their studies, these are the
22 results of the study.

23 They found that the base rate of serious violence in
24 Texas prisons were people who had committed murder is 16.4
25 percent over the course of a capital life term. And so

1 that's similar to the woman -- the female born today who has
2 the risk of breast cancer over life of an 80-year life span.

3 Q. 80-year life span?

4 A. Right. So we're looking at 16.4 probability. And
5 they found in their study these factors, that if it was
6 committed in the course of a robbery or burglary, you would
7 add 7.4 percent. If there were multiple victims, you would
8 add 5.6 percent. If there was a contemporaneous murder or
9 assault, basically separate or an assault that was included
10 of another victim in this offense, if the individual was a
11 member of an identified gang, if there was a prior prison
12 term, and the gangs -- you can see the gang involvement adds
13 10.4 percent. Prior prison term, you add 5.3. And
14 consistent with the graphs that we've been showing about the
15 age factor, if you're under age 21, they're going to add 5.5.
16 So this is your number going in. Just like when you're a
17 woman and you're born, that's your lifetime prevalence rate.
18 So they start out with this number, and these are things that
19 are an increased risk.

20 Q. Okay.

21 A. And if -- once you get this, this number doesn't
22 change for you as you age. You continue to carry this risk
23 rate with you, whether it comes to fruition or not, that's --
24 that's just --

25 Q. That's your number?

1 A. It's stamped on your head when you go in,
2 essentially, figuratively. Now, the factors that they found
3 that were predictive of a reduced risk for violence in
4 prison -- again, we're looking -- we're starting out --
5 everybody going in we get the base rate of 16.4. If you were
6 26 through 30 -- so between the ages of 21 or 25 or -- there
7 is no change. That's the index group, because you don't --
8 at that age you don't have an increased risk, you don't have
9 a decreased risk. So what they found here is that if you're
10 age 26 through 30 -- you remember how those graphs, they fell
11 off incrementally on the ages, you subtract 7.2. Ages 31
12 through 35, you subtract 12.3. And if you're over age 35
13 going in for a murder committed in the community, you
14 subtract 14.4 for your risk in prison to be violent in
15 prison. So that the possible range is 2 percent lifetime
16 probability to 54.6 lifetime probability. If you're under 21
17 and you have all of the aggravating factors, then you're
18 going to have a 54.6 percent risk.

19 Q. Which is certainly a probability?

20 A. Right.

21 Q. It's a preponderance of the evidence?

22 A. In other words, the gang membership and being under
23 21 is going to add significantly.

24 Q. And we don't have that in this case?

25 A. Not in this case.

1 Q. Okay.

2 A. So then we looked at Mr. Murphy. Want to apply this
3 to him individually. We look at the base rate, and then
4 there was a robbery that was involved in the commission of
5 the capital offense. He has a prior prison term, but I put
6 it in brackets. It was a TDCJ boot camp. There was a
7 probation violation. His probation was rescinded, and he was
8 sent in. There's no indication that there were any
9 disciplinary problems while he was there, so when he
10 acknowledged that he had prior prison term, and you can add
11 or subtract. I mean, you're not going to subtract it, but
12 you can -- you acknowledge it, and you can add it. So that
13 gives his range from 23.8 to 29.1 overall risk rate for the
14 lifetime of a capital life term. And this is a probability
15 which is a relative possibility.

16 Q. So that's Jim's grade basically?

17 A. Basically that's his grade, his statistical grade.
18 And he would carry this -- in other words, this is still his
19 rate at age 65. It's not like we're -- driving your rate is
20 going to change. Here, this over your lifetime.

21 Q. Okay. So tell us about the likelihood of Jim or
22 Jedidiah Murphy being violent in prison.

23 A. Again, this is a narrative kind of reflection of
24 what we've been talking about, what we've looked at the
25 information here. His increased risk have these two factors,

1 and then -- but this is the plus or minus over here. On the
2 decreased risk side, we see that he did have the correctional
3 behavior. He had no disciplinary write-ups that -- I mean
4 there was basically a base sheet indicating that there was no
5 problems. And he's not had any write-ups for predatory
6 assault while in jail. His hospital behavior which is an
7 institutional environment, not exactly the same, but we can
8 look at that. He had no predatory assault against patients
9 or staff because as a mental -- as a mental health patient or
10 as a mentally ill offender, he could potentially go to one of
11 the three hospitals that TDCJ has if he has an acute episode
12 or some kind of chronic psychiatric illness. That would be a
13 possibility. And so looking at his hospital behavior in that
14 context is relevant. He was -- he was not discharged from
15 the private hospitals for any kind of threatening or
16 unmanageable behavior. And he is willing to seek mental
17 health treatment. That's evident in his records. He has
18 family contact, and they are supportive of him. He has at
19 least average intelligence, which means he can be involved in
20 prison programs which would be -- have a positive affect on
21 him and his behavior.

22 Q. Okay. And let's -- let me emphasize this is -- the
23 prison is not the same environment as going to Timberlawn
24 Psychiatric Hospital, is it?

25 A. No. No. I've been to the Montford Unit in

1 Lubbock. I've see it. It is a hospital, but it's within a
2 prison setting. It has the same kind of security,
3 protection.

4 Q. The attitude towards the person though is different.
5 What is the attitude towards someone in a psychiatric
6 hospital?

7 A. I've worked at the psychiatric hospital. The idea
8 is that when you're exhibiting symptoms, you have a
9 counselor, someone will come and talk to you, your
10 psychiatrist will come and talk to you, group members are
11 going to sit and talk to you. They have training and
12 measures for dealing with -- if there's an aggressive act, if
13 someone is refusing to go to their room, they have approved
14 holds that they can put on someone. And sometimes they put
15 soft restraints on them. Maybe they might be restrained to
16 their wheelchair. They might be restrained to their bed, but
17 they're still allowed to go to activities in some cases.
18 I've seen that.

19 Q. Okay.

20 A. So essentially if you're having a problem, you have
21 a lot of people to talk to.

22 Q. And you're looked on as a patient --

23 A. You're a patient. You're not an offender; you're a
24 patient.

25 Q. And in prison you're looked on quite differently --

1 A. Right. They have treatment for mental illness, but
2 the primary focus is on -- the first order is protection and
3 control. And so they want to treat the mentally ill offender
4 to improve their behavior and their condition and improve
5 safety, that sort of thing, for those around them. But
6 control is the major factor, and so where you might have some
7 of these other perks in a mental hospital -- in prison
8 hospital, if you continue to act out, you're more likely to
9 be isolated.

10 Q. So essentially we have here in Jedidiah Murphy the
11 fact that there was a robbery in this murder increases his
12 risk?

13 A. Yes.

14 Q. And the fact that he went to boot camp for a few
15 months and got out is considered prison time or Texas
16 Department of Criminal Justice time?

17 A. Yes.

18 Q. But his risk is decreased by all of these things
19 you've gone over?

20 A. Potentially those things are factors that will
21 decrease his risk for any kind of problem in prison, major
22 problems in prison.

23 Q. Okay. Let's go to the next one. Okay. What are
24 the custody options here?

25 A. Well, capital offenders, if they're given a life

1 sentence, go into general population maximum security -- what
2 they call close custody. If there are some problems or if
3 they need protective custody, then they can go into
4 administrative segregation. I didn't show it on here, but
5 you can also include custody option at one of the three
6 hospitals that they have available. And then for individuals
7 who are in the system who are considered to be violent or
8 predatory against inmates or correctional officers or anybody
9 else who might be there, then they have what they call super
10 max TCJC. They have one at the Michael Unit. I believe that
11 may be the first one they built. I believe they may have
12 some others. And it's a single cell, 23-hour a day lockdown,
13 with tight security and restrictive movement. And so they
14 could be virtually isolated for -- could be years. They
15 have -- they have levels within that system for people who
16 have not been a problem in the system and are transferred
17 there as a precautionary measure, they may go into the best
18 level. But if you are having problems, you'll go into the
19 level where you have the least opportunity for any kind of
20 pleasantries in your cell. You have minimum necessities in
21 your cell.

22 Q. Okay. Now, when a person goes to prison, Dr.
23 Kessner, where do they go first?

24 A. There's a Diagnostic Unit, and they all go there and
25 they're evaluated for health, mental health classification.

1 Q. And there are a lot of different classifications,
2 aren't there?

3 A. Yes.

4 Q. And they're all over the State. There are different
5 place that do different things. You've done some work in
6 regard to the way the penitentiary works, have you not?

7 A. Yes.

8 Q. Tell the jury a little bit about what kinds of
9 options are there --

10 A. Well --

11 Q. -- in prison.

12 A. -- they have -- they have minimum and medium and
13 maximum, but for this type of offender you're always going to
14 be assigned to a maximum facility. Now, based on their
15 behavior, they can be classed -- I believe someone convicted
16 of murder can only be classed -- what they call an S-3. They
17 can't go any higher than that. So they're in their -- they
18 could be in a minimum -- a maximum facility and be considered
19 what's called minimum in. In other words, they have to stay
20 within the perimeters of the fence and razor wire under
21 observation, but they are able to work within that
22 environment. And then -- as I said, there's the option of
23 the super max where they are not allowed to go anywhere.
24 They eat all their meals alone. And they even exercise alone
25 in a very small cell under guard or under -- you know,

1 there's a guard that can see them and monitor them while
2 they're in there. And so -- but that's the range for someone
3 who has committed a murder.

4 Q. Okay. Let's go to the next sheet. Custody
5 Interventions Relevant to Risk Assessment.

6 A. This is just a narrative description of some of the
7 things we've been talking about. Deterrence is the fence,
8 the wire, the guards, the policies and procedures. If
9 they're -- if they're managed properly, if they're adhered to
10 by the staff. Classification procedures. When they go in,
11 they get a packet. They look at the information. And they
12 assign inmates. And they have a review, I believe -- I
13 believe within six months. If there are no incidents,
14 they're going to have a review. And then after that they
15 have scheduled reviews. Medication consultation for health
16 and mental health issues that might relate to behavioral
17 problems, because there are physical health issues that can
18 relate to behavioral problems, someone with diabetes, there's
19 epilepsy, other types of problems that people have.
20 Counseling, there are group counseling opportunities.
21 Prevention and rehabilitation classes like substance abuse
22 groups, that sort of thing. Mentoring programs, religious
23 programs, educational programs. There's an opportunity to
24 get your GED, get a high school education, train for some
25 type of a trade. Work programs in the system. And inmate

1 organizations which would be support organizations. All of
2 these are designed to improve the behavior because the first
3 priority is safety and control.

4 Q. And it's a pretty grim scenario, isn't it?

5 A. I've been in several prisons in Texas, and it is not
6 someplace you would want to spend your time.

7 Q. Is there a next one?

8 A. Nope.

9 Q. You have looked at all these records for Jedidiah
10 Murphy, and you've testified about these things that would
11 make him a person who has a base rate that you have testified
12 to. Does it make any difference in your opinion that
13 although Jim went to mental health places, he didn't stay or
14 complete? Does that change your feeling that because he has
15 tried to get help, that would decrease his risk in prison?

16 A. Are you asking if it would increase his risk that he
17 didn't stay?

18 Q. Well, actually -- no.

19 A. Ask the question again.

20 Q. You said that the fact he sought help before it was
21 a decreasing factor for him.

22 A. It's an indication that he's willing to seek out
23 help when he's having a problem.

24 Q. Okay. And even though he didn't successfully
25 complete those programs, does that change the fact that --

1 your risk factor?

2 A. No. No, it doesn't.

3 Q. Now, you're aware of his suicide attempt in the
4 jail, are you not?

5 A. Yes.

6 Q. So tell the jury, if you will, from looking at
7 everything that you've looked at, whether in fact you think
8 Jim Murphy would be a predator or more preyed upon in the
9 penitentiary?

10 A. Individuals with mental illness do have behavior
11 problems in a system like that, and that can be related to a
12 lot of factors. They might have a higher incidence of
13 breaking the rules, but they're also considered to be more
14 vulnerable to more predatory inmates. For instance, somebody
15 who had evidence of cutting on their arm could be considered
16 more vulnerable and so inmates that are inclined that way
17 might target them for either harassment, taking their
18 commissary, other things like that, so it's -- very often
19 this type of inmate is considered to be in need of protective
20 custody rather than being predatory.

21 Q. And that's Jim Murphy?

22 A. Yes.

23 Q. And he's been in jail for a few months now, and he's
24 been in jail in the past. Have you seen anything in those
25 records, although those are not prison sentences, they're

1 county jail scenarios except for the boot camp, that would
2 make you think that he would be a future danger or threat in
3 the penitentiary?

4 A. As I said, his probability would be considered low.
5 And I think that it's -- based on his mental illness history,
6 he's made considerable number of assaults on himself and
7 statistically the more attempts the makes, the more likely he
8 will succeed.

9 Q. Sooner or later?

10 A. Yes.

11 MS. LITTLE: Pass the witness.

12 THE COURT: Take a break.

13 THE BAILIFF: All rise.

14 THE COURT: Counsel, let's stand in recess
15 until 11:00 a.m.

16 (Jury excused from courtroom.)

17 THE BAILIFF: All rise.

18 THE COURT: Jury has returned to the
19 courtroom.

20 Mr. Murphy, counsel, visitors, you may be seated.

21 The State may proceed.

22 Cross-Examination

23 By Mr. Davis:

24 Q. Dr. Kessner, first of all, if you need to take a
25 break during this testimony, you just let me know. Okay?

1 Dr. Kessner, as I understand, you were hired to look
2 at the future dangerousness issue in this case, correct?

3 A. That's correct.

4 Q. Are you donating your time in this case?

5 A. No, I'm not. I'm being paid.

6 Q. How much -- how much are you charging for your time?

7 A. \$150 an hour.

8 Q. And how many hours have you put into this case
9 already?

10 A. I'm not certain. I submitted one invoice for \$4,300
11 at the end of the last -- before the break, the two-week
12 break.

13 Q. Okay. And you've done additional work since that
14 time?

15 A. Yes, but I haven't calculated it yet.

16 Q. This is not the first time that you've testified in
17 a capital murder trial, is it?

18 A. No, it's not.

19 Q. How many other times have you testified in a capital
20 murder trial?

21 A. Approximately 9 or 10. 10 on mitigation and/or risk
22 assessment.

23 Q. You've testified in several counties in Texas,
24 correct?

25 A. That's correct.

1 Q. And you've previously testified in death penalty
2 cases here in Dallas County, haven't you?

3 A. Yes, I have.

4 Q. You also testified in Karnes County, I believe, on a
5 death penalty case?

6 A. That's correct.

7 Q. And Karnes County, does that contain the Connally
8 Unit?

9 A. Yes, it does.

10 Q. The --

11 A. It's near Bonham. I'm not sure if it's in the same
12 county, but it's nearby.

13 Q. The case that you testified for -- well, first of
14 all, in the 9 or 10 cases that you've testified for, have
15 they been for the State or the defense?

16 A. For the defense.

17 Q. The individual that you testified for in Karnes
18 County was a Kenneth Vochosky, correct?

19 A. That's correct.

20 Q. Now, he received the death penalty, did he not?

21 A. Yes, he did.

22 Q. And in that case do you recall that Kenneth Vochosky
23 assisted a man -- bailed a man out of --

24 MR. BYCK: Your Honor, we will object to going
25 into the facts of these other cases as being irrelevant.

1 THE COURT: Overruled.

2 Q. (By Mr. Davis) In that case, isn't it true that
3 Kenneth Vochosky bailed a man out of jail who had been
4 arrested for a family or domestic violence case?

5 A. The man that you're referring to, I believe, was
6 a -- even a childhood friend and, yes, I think he had -- I'm
7 not sure he bailed him out, but they were together around the
8 time that the man left jail.

9 Q. Okay. As a matter of fact, in that case the man who
10 was in jail had threatened retaliation against the police
11 officers who put him in jail, correct?

12 A. He had long-term -- he had long-standing animosity
13 towards law enforcement, the man that was bailed out of jail,
14 yes.

15 Q. Kenneth Vochosky took that man to a gun shop and
16 bought 200 rounds of ammunition for him, didn't he?

17 A. I believe that was included as the facts of the
18 case. They had also had a history of hunting and target
19 shooting together.

20 Q. As a matter of fact, the man that had been
21 previously arrested for domestic violence then called the
22 police out to his residence and then proceeded to ambush and
23 kill three peace officers, didn't he?

24 A. Yes. He made a 911 call.

25 Q. Now, in Dallas County did you testify for a Leon

1 Dorsey?

2 A. I testified in that case, yes.

3 Q. Leon Dorsey, did he receive the death penalty, also?

4 A. Yes, he received the death penalty. He was
5 currently serving time, 60-year-sentence, I believe, on
6 another case and he received the death penalty in this case.

7 Q. And in that case the facts were that he went into a
8 Blockbuster video store here in Dallas and forced the two
9 young employees to the back room, didn't he?

10 A. I'm trying to remember if he -- if the facts were
11 that he put them in the back room, but I know there were two
12 employees.

13 Q. Proceeded then to shoot and kill them both, didn't
14 he?

15 A. They were both shot, yes.

16 Q. After he committed that offense, isn't it true that
17 he went to Ennis, south of Dallas, and he proceeded to shoot
18 and kill a 50-year-old female store clerk in Ennis, Texas?

19 A. That's the one I believe that he was currently in
20 prison for. I'm not sure how close in time that event took
21 place. I'm not sure. It wasn't the same day. It was much
22 later, I believe.

23 Q. And he received a 60-year sentence there?

24 A. Yes.

25 Q. Before authorities discovered that he had committed

1 the Blockbuster case?

2 A. I believe he was -- he was looked at initially in
3 the Blockbuster case and then on a cold case review they went
4 back and talked to him after he was already in TDCJ.

5 Q. As I recall in that case didn't you testify about
6 both mitigation and future dangerousness?

7 A. Yes, I did.

8 Q. And again, the jury saw fit to assess a death
9 penalty against Leon Dorsey?

10 A. Yes.

11 Q. You remember testifying for a William Rayford here
12 in Dallas County?

13 A. Yes.

14 Q. Do you recall in that case that William Rayford went
15 over to an apartment, that he strangled, beat, and stabbed a
16 44-year-old woman to death?

17 A. I believe it was actually a house and it was one
18 they had shared together for a time, but it was a house
19 rather than an apartment.

20 Q. Did he -- did he strangle and beat and stab a
21 44-year-old woman to death?

22 A. Yes.

23 Q. And in fact he did that in front of the woman's
24 11-year-old son, didn't he?

25 A. The son was present, yes.

1 Q. And before he left that residence, isn't it true
2 that he took a knife and slit the boy's throat?

3 A. I believe the boy was wounded. I believe the woman
4 was actually chased out of the house and was beaten in a
5 nearby lot.

6 Q. William Rayford had already committed a previous
7 murder, hadn't he?

8 A. Yes, in the community. He had killed his wife.

9 Q. Back in 1986 he had killed his wife and had been in
10 the penitentiary system, then paroled out, right?

11 A. He received, I think, a 23-year history -- sentence,
12 served about 8 years, and had a good adjustment in prison.

13 Q. In that case you testified on the issue of future
14 dangerousness; is that correct?

15 A. And mitigation.

16 Q. And mitigation. Did the jury agree with your
17 assessment, or did they assess the death penalty against
18 Rayford?

19 A. They gave the death penalty.

20 Q. Now, as far as expert testimony, I believe you've
21 already told us that in this case you're testifying about
22 future dangerousness, but you've also come into Dallas courts
23 and other courts in this State as an expert in mitigation?

24 A. Yes.

25 Q. Now, you've also come into Dallas County and you've

1 represented yourself to juries as an expert on eyewitness
2 identification, haven't you?

3 A. I've testified in one case on that issue.

4 Q. Have you ever done any study, any independent
5 studies into the issue of eyewitness identification?

6 A. I've reviewed the literature, studied the
7 literature, talked to people who had done original research.

8 Q. So I take it that your answer is, no, you yourself
9 have not done any study --

10 A. You said study. I've not done any research.

11 Q. Doctor, you oppose the death penalty in Texas, don't
12 you?

13 A. I would say that as I've worked on these cases, my
14 opinion has evolved.

15 Q. And your opinion is what?

16 A. Originally I was not necessarily opposed to it, but
17 I don't necessarily think that it is the remedy that the
18 public believes that it is.

19 Q. And many of the authors and researchers that you
20 rely upon share your opinions, don't they, about the death
21 penalty?

22 A. Some may.

23 Q. James Marquart does, doesn't he?

24 A. I have not read his opinion.

25 Q. Doctor, would you agree with me that in reaching any

1 conclusion in a matter as serious as this one, that it's
2 important to get as much information as possible?

3 A. I think information is vital, yes.

4 Q. I mean, even insurance underwriters do that when
5 they're deciding to issue a policy, don't they?

6 A. Correct.

7 Q. And when you talked about the insurance industry,
8 have you ever worked for an insurance company?

9 A. No, I haven't.

10 Q. Never been an underwriter, have you?

11 A. No, I haven't.

12 Q. You would agree with me that insurance companies may
13 set an initial premium on an individual, but they use that
14 individual's personal history in adjusting the premiums up
15 and down, don't they?

16 A. Relevant personal history, yes.

17 Q. Right. I mean, if somebody goes out with car
18 insurance, they get into a lot of accidents, that premium is
19 going up, isn't it?

20 A. It would, yes, or they would be canceled.

21 Q. Now in this particular case how many people did you
22 interview?

23 A. I interviewed the defendant and reviewed the records
24 that are in this suitcase over here.

25 Q. So the only person that you interviewed is Jedidiah

1 Murphy, right?

2 A. Yes.

3 Q. You never talked with any member of any law
4 enforcement department, did you?

5 A. No, I read law enforcement records.

6 Q. Never talked with the people down from Van Zandt
7 County Probation Department?

8 A. No, I took the conviction facts of the case as
9 accurate so I wasn't going to dispute that information.

10 Q. Well, with regards to all the medical treatment and
11 his willingness to undergo treatment, you never went back to
12 any of the treating physicians or counselors that he had seen
13 previously, did you?

14 A. I read their reports.

15 Q. Did you ever pick up a telephone and say, hey,
16 doctor, I'd like to talk to you about Jedidiah Murphy?

17 A. No.

18 Q. Did you ever talk about any of his other victims?

19 A. To Mr. Murphy?

20 Q. No. For instance, did you ever talk with Elisabeth
21 Erwin?

22 A. No, I didn't.

23 Q. Debbie Armstrong?

24 A. The only person I talked to was Mr. Murphy.

25 Q. Would you agree with me, Doctor, that your opinions

1 are only as good as the information that you receive?

2 A. That's the foundation for my opinions, yes.

3 Q. When you talked with the defendant, did you consider
4 him to be a credible source of information?

5 A. He was reasonably credible. He did not deny his
6 record, his history of contact with law enforcement, that
7 sort of thing. He was pretty clear about that.

8 Q. During your interviews with him, did he lie to you?

9 A. I don't believe that anything he said was
10 inconsistent with what was in the records.

11 Q. You discussed the 1996 gunshot wound to his left
12 hand, didn't you?

13 A. That was self-inflicted.

14 Q. That's what he told you, that it was self-inflicted?

15 A. In front of his girlfriend. That was also indicated
16 in different records, based on his self report to those
17 individuals.

18 Q. To what individuals?

19 A. When he would be in a mental hospital and he would
20 tell them he had a gunshot wound to the hand, that sort of
21 thing.

22 Q. Yeah, I know he mentioned a gunshot wound, but do
23 you know the reasons that he gave various doctors about how
24 that gunshot wound occurred?

25 A. Being angry, upset, fighting with his girlfriend.

1 There's a lot of different reasons why individuals with that
2 type of mental illness history give for inflicting self
3 harm. It's not unusual.

4 Q. Well, I mean have you ever looked at the records
5 from the hospitals in Texarkana or the physician that treated
6 him in Texarkana?

7 A. I didn't see those records.

8 Q. So you don't know that he gave entirely different
9 versions to the doctors that treated him on the spot, right?

10 A. No, I didn't see the Texarkana records.

11 Q. And in fact, in the records at Timberlawn he tried
12 to claim to the doctors over there that it was -- that
13 gunshot wound was a result of a robbery attempt where he was
14 a victim --

15 A. Yes, I saw that.

16 Q. You remember that, don't you? That was totally
17 inconsistent with what the man tried to tell you, isn't it?

18 A. Yes. But for the most part in the records it was --
19 I believe indicated that it was self-inflicted.

20 Q. I've looked at those records, and I don't see
21 anything about self-inflicted.

22 MS. LITTLE: I'll object to that as
23 testifying --

24 THE COURT: Sustained.

25 Q. (By Mr. Davis) This man tried to claim to you,

1 didn't he, that he shattered his median nerve in that gunshot
2 wound? That's what he told you, isn't it?

3 A. I think he indicated that was the result, that there
4 was a numbness or some kind of loss sensation in his fingers,
5 paresthesia.

6 Q. Have you reviewed your notes of your interview with
7 the defendant?

8 (Witness retrieves notes.)

9 Q. (By Mr. Davis) Your records indicate, don't they,
10 that this man told you that he was treated in Texarkana,
11 shattered median nerve, can't feel fingers anymore?

12 A. Yeah, I think he said that.

13 Q. That's not true, is it?

14 A. Well, as I said, I haven't seen the reports from
15 Texarkana. I know that's what he claimed. There were
16 several instances where he claimed things somewhere in a
17 record and when I questioned him about it, he would say
18 things like he didn't know why they had that in there, he
19 didn't know why it said that, but generally it had to do with
20 things about his own person.

21 Q. So you haven't seen the operative report of Dr.
22 DeHaan in Texarkana that states there was not even a
23 laceration to the median nerve?

24 A. No, I haven't seen that.

25 Q. When he talked about the incident over at the

1 government center jail, do you remember talking with him
2 about that, don't you, where he stiffened up?

3 A. Yes, it was related to his claim of having urinary
4 retention.

5 Q. And he claimed to you that he stiffened up because
6 he had to go to the bathroom, right?

7 A. He indicated that he'd had that problem since he was
8 a child, I believe, living with the Tolars.

9 Q. Again, my question to you is this: Did he tell you
10 that at the government center jail that he stiffened up
11 because he had to go to the bathroom?

12 A. He'd had the problem for some time. He had to go to
13 the bathroom and he couldn't go around other people is what
14 he told me.

15 Q. You've seen the incident report, haven't you?

16 A. I saw the offense report, uh-huh.

17 Q. Have you seen the nurses notes?

18 A. I did see them. I don't recall what they said at
19 this time.

20 Q. Do you recall that the nurses notes indicate that
21 once he -- well, first of all, he told you he was there to
22 talk to some investigator guy. I think that's the expression
23 he used, wasn't it?

24 A. What page of my notes are you looking at?

25 Q. Let's see, I don't know how they're numbered, but

1 they're --

2 A. The front -- the front pages are numbered.

3 Q. Okay. 15, I'm sorry. Toward the bottom, do you see
4 stiffened up because he had to go to --

5 A. Yes, uh-huh.

6 Q. Okay.

7 A. Asked nurse to let him go to the bathroom.

8 Q. Right. At the government center, talked to an
9 investigator guy. You understood that that was the reason he
10 was at the government center that day, right?

11 A. Yes.

12 Q. And as a matter of fact, the nurses notes indicate
13 that once that investigator left, this man never made another
14 request to go see or go to the bathroom or seek medical care
15 for any supposed urinary problems, did he?

16 A. As I say, I'd have to look at that again to refresh
17 my memory.

18 Q. Let me just -- let's go to the studies if we could
19 for a moment. Again, have you ever done any independent
20 research of your own as to these base rate figures that
21 you've talked to the jury about?

22 A. No, I haven't.

23 Q. So you're relying again on studies done by other
24 people and their research?

25 A. The studies are done by other individuals and then

1 some of the information is also Department of Justice
2 statistics.

3 Q. And I saw a slide on the Furman study, that's
4 something that you are relying upon, isn't it?

5 A. Well, that is a historical base rate to make as a
6 comparison.

7 Q. Now, the Furman decision came down in 1972, didn't
8 it?

9 A. Yes, that's correct.

10 Q. And would you agree with me, Doctor, that the
11 individuals that were studied in Furman -- I mean, some of
12 those individuals committed offenses that aren't even
13 considered to be capital murder in the United States
14 anymore?

15 A. Some of them committed rape, and some of them
16 committed robbery.

17 Q. Right. So you've got non-capital offenders by
18 today's definition being studied in Furman, don't you?

19 A. Some of them, but the majority of them were murders.

20 Q. Well, even with regards to the murders, they don't
21 necessarily fit within the category of capital murder today,
22 do they?

23 A. Some may, some may not.

24 Q. So you've got a segment there that's being studied,
25 robbery, rape, and what I'm going to, for lack of a better

1 term, call simple murder, not capital murder, right?

2 A. Well, I believe it was found that they were being
3 over inclusive in -- in decisions and that's why the Supreme
4 Court wanted them to narrow the definition.

5 Q. Yeah, and they're looking at inmates from states
6 whose capital murder scheme is very different than that of
7 the State of Texas, right?

8 A. As I said, the studies are consistent across this
9 diversity.

10 Q. Again, my question, please, is this: Are they
11 looking at states with capital murder defendants where the
12 State's capital murder scheme is different than that of the
13 State of Texas?

14 A. Diverse capital statutes.

15 Q. And even if we're looking at Texas, forgetting the
16 other states used in that study, would you agree with me that
17 the capital murder sentencing scheme in Texas has changed
18 dramatically since Furman was decided?

19 A. There have been additions to this -- to the nature
20 of the offense over the time.

21 Q. Well, there has been -- as a matter of fact, when
22 Furman was decided, we had no Special Issue Number 2
23 concerning mitigation in the State of Texas even, did we?

24 A. I believe that's right.

25 Q. Yeah. And even the issues concerning future

1 dangerousness, deliberateness, etcetera, they've changed
2 since Furman, too, haven't they?

3 A. Correct.

4 Q. When you talked about the Texas Department of
5 Criminal Justice, have you ever worked for the Department
6 of -- the Texas Department of Criminal Justice?

7 A. I have not been an employee, no.

8 Q. You talked about behavior inside the penitentiary
9 system here in Texas. Talking about the general population
10 first, certainly criminal acts of violence occur in the
11 general population, don't they?

12 A. Sure, they do.

13 Q. And rules infractions occur in the general
14 population, don't they?

15 A. Yes, they do.

16 Q. Not all assaultive behavior, not all criminal acts
17 of violence are reported in the general population, are they?

18 A. I would say those that lead to injury or consequence
19 probably are reported. The ones that are more significant --
20 a fight may not be, but anything that results in injury or
21 requirement for medical attention would be listed.

22 Q. So assaults -- some assaultive behavior wouldn't
23 even be reported to the staff to be included in these
24 studies, would they?

25 A. Well, having a fist fight wouldn't be that unusual

1 and that may or may not be observed by a guard. So it might
2 not get reported.

3 Q. So the numbers that you've -- that you've relayed to
4 this jury may not include all of the true violence that
5 occurs in the penitentiary general population, correct?

6 A. Well, that may -- correct, but it would be a
7 consistent effect across the population and different
8 populations.

9 Q. How much of the assaultive behavior is -- goes
10 unreported in the Texas Department of Criminal Justice
11 system?

12 A. Well, if it's unreported, then no one would know,
13 right?

14 Q. As a matter of fact, if we just look at death row
15 inmates -- I mean, criminal acts of violence occur even in
16 death row in the State of Texas, don't they?

17 A. They have occurred in that population.

18 Q. Death row would have to be considered an extremely
19 secure area within the overall prison population, wouldn't
20 it?

21 A. I believe it's more secure now, but there was a time
22 when they were allowed to work in the prison system and so
23 there was more movement and opportunity for interaction at
24 that time. It was before 1998.

25 Q. I mean, cells used in the death row system, each

1 inmate's housed separately there, aren't they?

2 A. Now they are. They're housed separately, but as I
3 said, I think before 1998 they were allowed to move around
4 and they went to work.

5 Q. Well, were they housed separately on death row,
6 prior to the new Terrell Unit?

7 A. I think at that time they had cells, in some
8 circumstances.

9 Q. I mean, some of those cells even had wire mesh so
10 that the inmates couldn't assault the staff members and other
11 inmates, didn't they?

12 A. That was I think in the early days.

13 Q. And yet despite those precautions and single cell of
14 the inmates, I mean assaults have occurred on death row,
15 haven't they?

16 A. Prior to single celling or subsequent to single
17 celling?

18 Q. Well, I'm just asking --

19 A. There have been assaults on death row, yes.

20 Q. Kidnappings have occurred on death row, haven't
21 they?

22 A. I'm not familiar with any kidnappings on -- well,
23 let's see. I'm not familiar with any kidnappings on death
24 row.

25 Q. Murders?

1 A. Yes.

2 Q. I mean, even murders have occurred while people are
3 housed on death row, right?

4 A. It's my understanding that there was one in 1979,
5 and -- of a death row inmate killing another death row
6 inmate, was a self-defense plea and he got three years.

7 Q. You're saying that's the only homicide that's
8 occurred on death row?

9 A. Well, I think there may have been one other. The
10 victim was not a death row inmate. I believe that's the
11 information I have.

12 Q. People have escaped from death row, haven't they?

13 A. 1998 Thanksgiving, there was one escape.

14 Q. You talked about all of the programs that are
15 available for inmates down there at the TDCJ. You talk about
16 rehabilitation classes for instance. Do you remember that?

17 A. Yes, for substance abuse and emotional issues and --

18 Q. The truth is when Jedidiah Murphy goes down to the
19 prison system, no one can force him to attend those types of
20 programs, can they?

21 A. To my understanding, that's correct.

22 Q. Inmate organizations. Again, no one can force
23 Jedidiah Murphy to join those organizations and take part in
24 them, can they?

25 A. I think the purpose would be absent if somebody

1 forced somebody to participate.

2 Q. So the answer would be no, correct?

3 A. Right. Some inmates prefer to be isolated and spend
4 their time alone.

5 Q. Uh-huh. As far as educational or religious programs
6 or mentoring programs, again, when Mr. Murphy gets to the
7 penitentiary system, no one can force him to take advantage
8 of any of those programs either, can they?

9 A. That's correct.

10 Q. And with regards to psychological services, such as
11 counseling or therapy, if this man says I'm not taking part
12 in that kind of program, that's it, isn't it?

13 A. Well, they're not going to force someone, but there
14 are instances where someone is participating in a program and
15 they decide they don't want to participate for a while and
16 they return to the group, I've seen that in different records
17 that I've reviewed. So it may fluctuate over time.

18 Q. So if Mr. Murphy says I'm not going to go through
19 any counseling or therapy, I don't take -- I'm not going to
20 take part in that, I'm not going to take advantage of it, the
21 truth of the matter is, no one can force him to go through
22 that?

23 A. That would be his choice.

24 Q. And in the past he's shown a propensity not to take
25 advantage of help offered to him, hasn't he?

1 A. Well, he's been presented for mental health
2 treatment, and he has not always -- there are indications in
3 the record that he's asked to be discharged. That's not
4 inconsistent with his diagnosis.

5 Q. Well, I mean Timberlawn, for instance, he went over
6 there and discharged after three days, didn't he?

7 A. I think that was a stabilization. Some -- some
8 admissions are more for stabilizations. I know he presented
9 to Terrell, and they did not admit him.

10 Q. Well, they said they had an alcohol and drug program
11 and referred him on to another program, didn't they?

12 A. Right. At one time they did have a well-known
13 recognized drug and alcohol program. It's been discontinued.

14 Q. Right. And down there at Glen Oaks, I mean he
15 wasn't always cooperative down there, was he?

16 A. The records indicate that there was some behavior
17 problem, but that's not unusual. Sometimes the treatment
18 itself leads to what's called iatrogenic effects. That is,
19 that the treatment elicits the illness.

20 Q. Well, for instance. He refused to take part in
21 group counseling, didn't he, while at Glen Oaks?

22 A. He would leave group counseling when the subject of
23 sexual abuse came up, saying it was too troubling to him to
24 sit there and listen to it.

25 Q. And the behavioral problems with the staff members

1 down there -- now, the truth is Glen Oaks could have said
2 you're out of here based on assaultive behavior towards a
3 staff member, couldn't they?

4 A. Well, as I said, if they had assessed him as being
5 at that level of risk, they would have discharged him and
6 didn't discharge him.

7 Q. So they gave him the benefit of allowing him to stay
8 there and continued to try to help him even though he'd
9 exhibited that kind of behavior; is that right?

10 A. I think there was like one or two incidents of that
11 type of behavior which is not unusual considering his
12 diagnosis. And it's not unusual for a psychiatric facility.
13 I worked in several.

14 Q. So, again, the question is, Glen Oaks allowed him to
15 stay in their facility and continued to offer him counseling
16 even after he exhibited that type of behavior; is that -- is
17 that true or not true?

18 A. They did not discharge him.

19 Q. Your studies and your base rates, as I understand,
20 Doctor, we all start out with a 16.4, right?

21 A. Anyone entering the Texas Department of Criminal
22 Justice on a capital murder charge for a life sentence would
23 start out with a base rate of 16.4, based on their study.

24 Q. And based again upon the studies, did I understand
25 you to say that the highest possible base rate that a person

1 could accumulate on that type of offense would be 54.6?

2 A. Probability of acts of severe violence.

3 Q. So in the worst of the worst cases, assuming that
4 you had there before you the very worst offender with the
5 highest possible base rate, you're going to come into a court
6 and turn to a jury and say that the man is -- if we assume
7 that 50.1 is a probability, that the man is only 3.5 percent
8 over probability, right?

9 A. I'm not sure I understand your question. In other
10 words, that's his lifetime probability. That's his risk
11 level.

12 Q. And you're going to say to a jury in the very worst
13 of cases, that individual's risk assessment is 3.5 percent
14 over the threshold for a probability. You're not going to
15 say anything higher than 54.6 based on these studies, are
16 you?

17 A. Based on this research -- well, you're never going
18 to give a hundred percent probability to anybody. That would
19 be totally scientifically inaccurate. Based on this study,
20 they refined the information and this is the probability that
21 they developed, based on the factors that predict an increase
22 in risk.

23 Q. My question again is this: In the very worst case
24 imaginable, Doctor, you're never going to come in and
25 according to your study say that person is higher than a 54.6

1 percent risk factor?

2 A. According to the research that's available now, that
3 is -- that is the level of risk that someone could achieve.

4 Q. And that's -- that is the research that you consider
5 to be credible that you're basing your opinions upon, right?

6 A. Yes.

7 Q. Did I understand you to say, Doctor, that basically
8 extraneous offenses, what a person has done in the past,
9 really plays no part in this risk assessment?

10 A. It's not that it plays no part. It's just the
11 research has demonstrated that it does not predict violence
12 in prison. It may predict violence in the community, under
13 certain circumstances, but you have to take the context into
14 consideration when you're going to make your prediction.

15 Q. Your context is prison, right?

16 A. Yes.

17 Q. So in a prison context, extraneous offenses really
18 play no part in building up this risk factor assessment, does
19 it?

20 A. That -- Sorensen and Pilgrim took all factors,
21 offender, victim, offense characteristics into consideration
22 in their statistical analysis and it didn't prove to be
23 predictive, other than referring to contemporaneous assaults.

24 Q. So again --

25 A. -- and gang membership.

1 Q. -- based on the studies that you're relying upon,
2 past behavior is not a predictive factor, is it?

3 A. In a very limited sense --

4 Q. In a prison setting?

5 A. Gang membership would increase someone's risk, and
6 for instance, in an identified street gang that might be
7 recruitment -- easily recruited from by the prison gang
8 population and assault contemporaneous with the capital
9 offense.

10 Q. Well, if a man had previously committed two
11 burglaries, for instance, prior to commission of a capital
12 murder offense, that's no predictive factor?

13 A. It's not going to predict violence in prison over
14 the course of a capital life term.

15 Q. If a man kidnapped a woman in broad daylight, again,
16 same opinion, that's not a predictive factor for you, is it?

17 A. When you look -- if you --

18 Q. Is it a predictive factor?

19 A. No, it's not predictive of violence in prison.

20 Q. Thank you. Aggravated assault against an
21 individual, holding a gun to her head, is that a predictive
22 factor for violence in the prison system?

23 A. Looking at the context, if that occurs in the
24 community, it is not predictive of violence in the prison
25 system.

1 Q. Robbery in the community prior to the commission of
2 capital murder, is it a predictive factor for violence in a
3 prison system?

4 A. All of these offenders had those types of histories
5 so we're looking at things that will distinguish someone as
6 more violent or more likely to be violent in prison and so
7 statistically it's not going to predict more violence in
8 prison.

9 Q. As a matter of fact, don't the studies indicate that
10 murderers serving long sentences pose a lower risk in prison
11 than other types of inmates?

12 A. They have a lower infraction rate. As I said,
13 there's a small group among that group that are going have a
14 high rate of infraction and that will be violent.

15 Q. Again, if you look at the studies, if you base their
16 risk factors upon the studies that you're basing them on, I
17 mean those people would score very low on a risk assessment
18 scale, wouldn't they?

19 A. Some would, but you also take prior prison behavior
20 and so if you have that information, you would also apply it
21 and that's how you would likely modify your risk level. For
22 instance, if you had somebody that had been in prison before
23 and they were violent, then that 54.6, you would say it's a
24 low estimate.

25 Q. You know who the Texas 7 are, don't you?

1 A. Yes, I do.

2 Q. You know who George Rivas is, don't you?

3 A. Yes, I do.

4 Q. You know that prior to the escape, he had no major
5 violations in the prison system, did he?

6 A. I don't believe any of the offenders had any major
7 violations in the prison system.

8 Q. He was serving 18 life sentences. Based upon that
9 again, the predictive -- the prediction would have been for
10 no violence in prison by George Rivas, wouldn't it?

11 A. No predatory violence in prison.

12 Q. And yet during that escape in fact he did use
13 predatory violence to effect his escape, didn't he?

14 A. Yes.

15 Q. And the same would be true of the others, Michael
16 Rodriguez who was serving a capital life sentence, and others
17 who were very serving very long aggravated sentences, I mean
18 the prediction would have been that they pose a very low risk
19 for predatory violence in a prison?

20 A. As I said, in any group there's going to be a small
21 minority that is going to be a high risk and going to break
22 the rules at a higher rate.

23 Q. The studies would not have predicted the violence
24 that was inflicted by the Texas 7 in prison, would it?

25 A. Based on their community behavior, no, not

1 necessarily. I haven't evaluated them, looked at their
2 records to determine if they had a prior prison sentence and
3 what that was indicated, their ages at the time they went
4 into prison.

5 Q. Again, the studies, as I understood your slides and
6 the literature, the level of the violence of the capital
7 murder itself does not predict future violence in prison,
8 right?

9 A. Well, because all of the individuals have been
10 judged to have a high level of violence in the community by
11 virtue of their offense, so it does not distinguish them as
12 more violent in prison.

13 Q. So if this defendant down here had killed another
14 80-year-old woman sometime before he killed Bertie
15 Cunningham, that wouldn't change your risk assessment for him
16 either, would it?

17 A. No, that's not going to increase his level. They
18 didn't find that that was predictive in this study. They
19 would have added that in as a variable that was not
20 predictive.

21 Q. Was your answer, yes, it would not change my opinion
22 about him?

23 A. It would not have altered the conclusion.

24 Q. If he had gone out that day on October the 4th and
25 killed 10 Bertie Cunninghams or 20 Bertie Cunninghams or 30

1 Bertie Cunninghams, that wouldn't alter your opinion of his
2 risk assessment in prison, would it?

3 A. On the same day that Ms. Cunningham was killed?

4 Q. Yes.

5 A. In a spree, yes, it would have. Multiple victims or
6 assault in commission -- contemporaneously with that offense,
7 yes, it would have inflated his risk factor. That was found
8 to be predictive in the study.

9 Q. Well, let's say during one criminal -- one criminal
10 event he killed 20 or 30 individuals, would that have changed
11 your assessment on him?

12 A. You just add the percentage of risk level that that
13 counts for. I think it was 7.4 -- 5.6 for multiple victims;
14 robbery, 7.4; attempted murder or assault contemporaneously
15 at the similar time of this offense, you add 4 percent.

16 Q. You remember when you were asked about multiple
17 victims in Leon Dorsey?

18 A. No, I don't remember. This research wasn't
19 available at that time.

20 Q. You remember the prosecutor asking you that day
21 whether your opinion would change if Leon Dorsey killed 20
22 people, 30 people, 40 people, whether your opinions would
23 change and your answer at that time was, no, it wouldn't
24 change your risk assessment for Leon Dorsey.

25 A. Leon Dorsey had had a relatively good adjustment in

1 prison. I think he had 4 years in prison to evaluate so
2 that's the second -- on the slide where it said actuarial and
3 then pattern, so we had a pattern to look at with him for his
4 adjustment in prison.

5 Q. But when the prosecutor asked you in Leon Dorsey
6 about two years ago whether you would add additional risks
7 factors if Leon Dorsey was found to have killed 20, 30, or 40
8 people, you said at that time, no, that you're not going to
9 add risk factors?

10 A. Correct. As I said, this research was not available
11 at that time. So it hadn't been refined to that level. So I
12 would have added -- I forgot it again, 7 -- 5.6 percent for
13 multiple victims.

14 Q. So it turned out that the research that you were
15 basing your opinion on in the Leon Dorsey case, that was
16 wrong, wasn't it?

17 A. No, it wasn't wrong.

18 Q. They amended their findings, didn't they?

19 A. No, this isn't -- that's the nature of research. It
20 develops as new information becomes available and they put in
21 this -- that's what they were trying to do with this research
22 was to be able to add some factors so you could distinguish a
23 higher risk level.

24 Q. So if we had looked -- if we had based your risk
25 assessment in this case on research available to you two or

1 three years ago, you would have come up with a different
2 conclusion, correct?

3 A. In any event -- not necessarily. In any event
4 someone is going to fall somewhere -- if you are going to be
5 violent, it's going to fall somewhere between 10, 20 to 30
6 percent risk. As we saw in the slide, that was the level of
7 individuals that had serious rule violations or violent
8 offenses in prison. Consistently 70 to 90 percent did not
9 have that. So that was what I was basing that on. That
10 would still be true.

11 Q. Research may change next year?

12 A. It's pretty consistent research over a whole
13 century.

14 Q. Assaultive behavior in the community is not a
15 predictive for violence in prison, right? I think you've
16 just told us that. Kidnaps, robberies, those sorts of
17 things, they don't count for anything in the risk assessment?

18 A. Because the majority -- if it's not in the --

19 Q. I'm sorry, do they count or not?

20 A. Unless it was at the time of the capital offense, it
21 does not predict a greater risk in prison.

22 Q. Severity of the offense doesn't -- doesn't count
23 either? It doesn't increase the risk assessment, does it?

24 A. That particular slide was related to that federal
25 system, and within the first six months did it predict

1 behavior problems within the first six months, so this one
2 indicates that there's some factors about the offense that
3 could predict long-term risk for violence.

4 Q. What sort of things would that be?

5 A. Again, robbery or burglary in the commission of a
6 capital offense, multiple victims, gang membership, age under
7 21. Those are factors that they found in the analysis were
8 predictive of a higher level of risk, higher probability.

9 Q. What would it -- what would it take for you to say
10 that somebody is going to be a future danger in prison?

11 A. There -- there was one case that I worked on out of
12 State, and I recommended that if he received life sentence,
13 that he should be kept in the maximum level security that
14 they have because he was definitely a risk for predatory
15 violence in prison.

16 Q. Based upon what?

17 A. Based on the fact that he had been in prison before
18 and been violent in prison.

19 Q. So absent -- absent somebody already going to prison
20 and demonstrating prison violence, they're not going to meet
21 that threshold of 50.1 percent, are they?

22 A. Some will, based on the factors that are listed.
23 Some are going to go over that level.

24 Q. Doctor, I noticed, and correct me if I'm wrong, but
25 you were not asked any opinions about whether you thought

1 this man would be a future danger outside of prison. Were
2 you asked any questions of that nature?

3 A. I wasn't asked to answer that question.

4 Q. Because the whole context that you were testifying
5 for this morning is the context that the setting is prison,
6 right?

7 A. That's the setting for at least a minimum of 40
8 years.

9 Q. So when you look at the word "society" on Special
10 Issue Number 1, that means prison to you for at least 40
11 years, doesn't it?

12 A. A minimum of 40 years, yes.

13 Q. You don't consider society to be a part -- I mean
14 for the free world where you and I live to be a part of
15 society in Question Number 1 for at least 40 years, do you?

16 A. He would be in prison for at least 40 years, yes.

17 Q. So if you're looking at Special Issue Number 1 as a
18 juror, you're not going to consider the free world part of
19 society for the next 40 years, are you?

20 A. Not for the next 40 years. Now, beyond that there's
21 potential for parole.

22 Q. Or escape?

23 A. Well, that -- a lot depends on policies and
24 procedures being followed by the staff.

25 Q. Let me ask you, considering the community at large

1 here, do you have an opinion whether this man would pose a
2 future danger in the community at large, outside of prison?

3 A. I think at this time where he stands right now, he
4 has demonstrated he's violent in the community.

5 Q. Is your answer yes?

6 A. Yes.

7 Q. Thank you, Doctor.

8 A. Thank you.

9 THE COURT: Ms. Little.

10 Redirect Examination

11 By Ms. Little:

12 Q. Dr. Kessner, Jedidiah Murphy has been convicted of
13 capital murder; is that correct?

14 A. Yes, he has.

15 Q. And so there are two options here, a death sentence
16 whenever that would occur --

17 A. Yes.

18 Q. -- where he would remain in prison until the time
19 that sentence was carried out?

20 A. Yes.

21 Q. Or life in the penitentiary which at the present
22 time means 40 years?

23 A. Yes, ma'am.

24 Q. So he's going to be in prison, one way or the other?

25 A. He'll be incapacitated, yes.

1 Q. Now, are you aware that in the general population
2 inmates can and are forced to work?

3 A. Yes. They do assessments though and they -- there
4 may be for mental health considerations -- if -- they may
5 assign certain types of work based on physical and mental
6 health issues.

7 Q. If you are mentally and physically able to work, you
8 are required to?

9 A. Yes.

10 MS. LITTLE: May I approach the witness, Your
11 Honor.

12 THE COURT: You may.

13 MS. LITTLE: At this time, Your Honor, I would
14 offer Defense Exhibit 39 which is Gilda Kessner's vita.

15 (Defendant's Exhibit No. 39 offered)

16 MR. DAVIS: No objection.

17 THE COURT: Admitted.

18 (Defendant's Exhibit No. 39 admitted)

19 MS. LITTLE: And a copy, a soft copy of the
20 slides that were presented to this jury.

21 (Defendant's Exhibit No. 64 offered)

22 MR. DAVIS: No objection.

23 THE COURT: Admitted.

24 (Defendant's Exhibit No. 64 admitted)

25 Q. (By Ms. Little) Dr. Kessner, let me ask you to look

1 at Defendant's Exhibits 65, 66, and 67, and see if these are
2 other slides or copies of slides that you brought me today?

3 A. Yes, these are three.

4 Q. Okay. And we didn't go over those before, and I'm
5 not going to ask that we set that paraphernalia up again. So
6 I'm going to ask you to talk about these, but I'm going to
7 show them to the D.A. first.

8 MS. LITTLE: We'll offer these.

9 (Defendant's Exhibit No. 65 through 67 offered)

10 MR. DAVIS: If I can have a moment. I haven't
11 seen these previously, Your Honor.

12 Judge, I have no objections to Defendant's Exhibits
13 65, 66, or 67.

14 THE COURT: Admitted.

15 (Defendant's Exhibit No. 65 through 67 admitted)

16 Q. (By Ms. Little) Now, Dr. Kessner, there's been --
17 you know what the diagnosis is essentially here by the
18 psychiatrist that examined Jedidiah Murphy, don't you?

19 A. Yes. There are different diagnosis, but they are
20 consistent.

21 Q. Okay. There are, from what you know and looking at
22 the records, etcetera, some antisocial qualities in Jedidiah
23 Murphy?

24 A. Yes, he has some antisocial traits.

25 Q. Okay. So did I ask to you bring some information

1 about that, regarding persons who are in prison who have
2 antisocial personality disorder who are diagnosed as
3 antisocial personality disorder?

4 A. Yes.

5 Q. Let me ask you to step down because we're not going
6 to go through all that again.

7 Let's go to the middle.

8 THE COURT: Okay.

9 (Witness leaves the stand.)

10 Q. (By Ms. Little) This is Defendant's Exhibit Number
11 65, "Antisocial Personality Disorder Prevalence Among Prison
12 Inmates." Will you discuss that with this jury?

13 A. Essentially antisocial personality disorder does not
14 mean the same thing as criminality, but we find that in
15 prison that -- these are different research studies dating
16 back to 1969 actually -- that are referring to antisocial
17 personality disorder and they find that between 49 and 80
18 percent of inmates would qualify for that diagnosis. So then
19 we'll see that that is something that is commonly found in
20 prison. So again, it doesn't help us to distinguish among
21 inmates who's going to be more of a problem. If everybody
22 has the same trait, almost everybody has the same trait, it's
23 not going to tell us much. And it's a trait that's also
24 found in the community among people who do not violate the
25 law.

1 And in addition we have the DSM, the diagnostic and
2 statistical manual that we use that evolved over time. And
3 so there are a lot of questions about the disorder itself and
4 what actually we are defining.

5 Q. Okay. And Defendant's Exhibit Number 66.

6 A. This just shows that in NIMH Epidemiologic Catchment
7 Area Study, that's where they look in a geographic area and
8 they want to see what the numbers are in that area. In 1991
9 53 percent of community residents diagnosed with antisocial
10 personality disorder had no significant -- actually arrest
11 record itself is not necessarily indicative of antisocial
12 personality disorder. A couple of different studies in one
13 large community in the Northwest, 35 percent of males age 18
14 already had some contact with the police. And in another
15 location 25 percent males by the time of age 18 had already
16 some non-traffic related contact with the police department.
17 So just being arrested is not an indication of antisocial
18 personality disorder.

19 Q. Okay. And Defendant's Exhibit Number 67.

20 A. This talks about the changes in the DSM. The
21 criteria has shifted over time. With DSM-III-R there was
22 three and a half million opportunities for -- because there
23 was subcategories and so you may have the diagnosis -- the
24 person sitting next to you may have the diagnosis and there
25 are no similarities between you and the behavior, so right

1 there we're looking at something -- what are we defining. So
2 then that was way too broad. So they changed it for DSM-IV
3 which is what we use now and we still have 400,000. So --
4 and they are not weighted. The symptoms are not weighted.
5 For instance, financial irresponsibility can be considered
6 one, and there are certain things in our culture of financial
7 irresponsibility that people might feel uncomfortable, such
8 as failure to pay child support. And that could have been
9 included by a clinician to add that criteria to this
10 individual, so that shows you how broad it could be, as well
11 as assaulting somebody. Okay. And we're looking at a group
12 of factors, so not any one thing can provide the diagnosis.

13 Temporal instability, we talked about the aging
14 factor. As people age, their propensity for breaking the
15 law, for being violent is going to be reduced over time. A
16 lot of the personality disorder problems, which are basically
17 relationships problems that wreak havoc in their
18 relationships and their ability to get along at work, at
19 home, and at school that sort of ages out in the 40's for a
20 lot of this. Not necessarily -- there are some that may have
21 a lot more disturbance of thinking more related to
22 schizophrenia that would continue to have a problem, but a
23 lot of the relationship issues may have leveled out some.

24 Q. Okay.

25 A. Let's see here. And the overlap of substance abuse

1 disorders. A lot of the symptom criteria also can be found
2 in a similar vein under substance abuse disorder. So what
3 you have to do is you see is this a person that has a
4 substance problem and substance abuse is driving this other
5 behavior, or do we have someone who is very antisocial who
6 happens to use substances. In fact, the idea is that if it
7 is the substance and then you diagnosis the substance
8 dependence and you do not diagnose -- you can diagnose
9 antisocial traits, you can put that on there as an indicator
10 that they're having -- that the substance abuse is leading
11 them to have involvement with the criminal justice system.
12 Whether it's domestic violence or assaulting in the
13 community, driving vehicles under the influence, whatever
14 they're doing, but if the primary diagnosis is substance
15 that's driving the antisocial behavior, then you have an
16 substance abuse disorder diagnosis.

17 Q. Thank you.

18 Now, Dr. Kessner, all of these studies that you've
19 talked about have been done over a period of years and the
20 numbers are consistent. Is that what you testified to?

21 A. Yes, the findings are consistent over time.

22 Q. And this is because comparisons are made, is it not?

23 A. Yes, I mean there are comparings with the general
24 populations. They're comparing the groups that, you know, in
25 the previous studies and we see that the numbers are the

1 same.

2 Q. Okay. So if somebody comes in and says, well, they
3 were five knife assaults in the prison, with nothing to look
4 at overall -- am I making myself clear where I'm trying to go
5 with this?

6 A. Yes.

7 Q. What would that tell this jury, if anything at all?

8 A. It wouldn't tell them anything because you don't
9 know how many people are in prison. If there's 200,000
10 people in prison, that gives you some information as to what
11 the prevalence is. If you have five people in prison, then
12 you know you have a hundred percent problem.

13 Q. Okay.

14 A. So I mean, you have to know the context. You have
15 to know the information. Just the numbers by themselves are
16 not necessarily informative.

17 Q. Okay.

18 MS. LITTLE: That's all I have at this time.

19 Thank you.

20 MR. DAVIS: No further questions.

21 THE COURT: Take a lunch break. We will stand
22 in recess until 1 o'clock.

23 (Recess of proceedings.)

24 THE BAILIFF: All rise.

25 (Jury recessed from courtroom.)

1 THE COURT: Counsel, this next witness has
2 some kind of mechanical presentation. I would invite them to
3 start about in one minute getting it ready.

4 MS. BALIDO: I don't think that will be a
5 problem.

6 THE COURT: I'm not going to have any more
7 delays.

8 (Recess of proceedings.)

9 THE BAILIFF: All rise.

10 THE COURT: Record reflect the jury is
11 returning to the courtroom at this time.

12 (Jury returned to courtroom.)

13 THE COURT: Jury may be seated.

14 Mr. Murphy, counsel, visitors in the gallery, you
15 may be seated.

16 Defense may continue.

17 MS. LITTLE: Your Honor, at this time we would
18 offer Defense Exhibit Number 68, which is actually a
19 duplication of some records that have already been put into
20 evidence by Mr. Davis, specifically Aavid Thermal Tech
21 employment records for August of 1997. These are simply
22 better copies of the time cards.

23 (Defendant's Exhibit No. 68 offered)

24 MR. DAVIS: No objection.

25 THE COURT: Admitted.

1 (Defendant's Exhibit No. 68 admitted)

2 MS. LITTLE: May I, Your Honor.

3 THE COURT: You may.

4 MS. LITTLE: Ladies and gentlemen, what we
5 have here are the time cards for Jim Murphy's employment at a
6 place called Aavid in August of 1997 on through September.
7 There are a number of these records, but specifically right
8 here, where I opened it up, this is the 24th, 25th, 26th,
9 27th, 28th, 29th, and 30th of August of 1997. And as you can
10 see here, the punch cards reflect going to work at 2035, late
11 at night on the 25th, getting off work at 7:00 a.m.; Tuesday
12 the 26th, getting to work at 2314, getting off at 8:02; the
13 27th, going to work at 2354, getting off work at 7 -- that
14 looks like 65, you can sort that out; 28th, he goes to work
15 at 2330 and gets out of work at 7:54; the 29th, it goes on
16 essentially the same; 23/8, 23/7, for that important week of
17 August 27th -- 26th of 1997.

18 Jennifer.

19 MS. BALIDO: Judge, the defense calls
20 Detective Myers of the Garland Police Department.

21 THE COURT: You may continue.

22

23

24 MATT MYERS

25 was called as a witness by the Defendant and, after having

1 been first duly sworn, testified as follows:

2 Direct Examination

3 By Ms. Balido:

4 Q. Can you please state your name for the record?

5 A. My name is Matt Myers.

6 Q. And you're the same Matt Myers that has testified
7 previously in this case; is that correct?

8 A. Yes, ma'am.

9 Q. I'm going to direct your attention specifically back
10 to when you were interviewing Mr. Murphy at the Garland
11 Police Department the very first time. Okay?

12 A. Yes, ma'am.

13 Q. When you sat down with Mr. Murphy in that first
14 initial interview, was he emotional at that time?

15 A. Part of the time he was, yes, ma'am.

16 Q. Okay. And it wasn't just one, but a couple of
17 different times he did get rather emotional; is that correct?

18 A. Well, actually it was one time on a couple of
19 different days.

20 Q. Okay. He got emotional one time on a couple of
21 different days?

22 A. Uh-huh.

23 Q. Okay. And how did he -- how did he, I guess,
24 manifest or how physically did he show his emotion? Was he
25 violent? Did he cry? Did he just tear up? What was the

1 situation?

2 A. I would describe it -- he wasn't violent. He cried
3 very briefly. I'd say maybe 30 seconds, maybe a minute.

4 Q. Okay. But that -- this happened on more than one
5 occasion?

6 A. It happened on two separate occasions.

7 Q. Uh-huh. And when you were asking him questions,
8 isn't true that when he was answering you, he was forthright
9 and direct?

10 A. I thought he was some of the times.

11 Q. Okay. And that again, he was also remorseful at
12 times?

13 A. Well, he was emotional and he did -- you know, he
14 did cry.

15 Q. But he was remorseful, you thought?

16 A. Yes.

17 Q. Okay. And is it true that the first thing that he
18 told you was that he was the person that was responsible for
19 Ms. Cunningham's disappearance and death?

20 A. He did admit to that pretty quickly, yes.

21 Q. Okay. And also in your interview with Mr. Murphy,
22 did he also let you know that he had some sort of mental
23 background or you became aware that there was some sort of
24 mental background?

25 A. Yes.

1 Q. Let me ask you about not the first time you
2 interviewed him and not the second time that you went back
3 and interviewed him, but the third time that you went back
4 and interviewed him. Okay?

5 A. Yes.

6 Q. Can you tell me and the ladies and gentlemen of the
7 jury who is Cindy Hale?

8 A. Cindy Hale is actually an employee of the police
9 department.

10 Q. Okay. And --

11 MS. BALIDO: May I approach the witness.

12 THE COURT: You may.

13 Q. (By Ms. Balido) I'm showing you what has been
14 marked as an exhibit -- as Defendant's Exhibit Number 2, and
15 I ask if you recognize this document.

16 A. I do.

17 Q. And what is this document?

18 A. This is a two-page -- a two-page document that was
19 presented to Mr. Murphy on October the 11th.

20 Q. Okay. Has it been changed or altered in any way
21 since the last time you saw it?

22 A. I don't believe so, no.

23 Q. Okay. In fact you pulled it out of your notebook
24 and gave it to me so I could make it an exhibit, is that
25 correct, at a prior hearing?

1 A. That's correct.

2 MS. BALIDO: Judge, at this time we'd offer it
3 as Defense Exhibit Number 2 for all purposes.

4 (Defendant's Exhibit No. 2 offered)

5 MR. DAVIS: No objection.

6 THE COURT: Admitted.

7 (Defendant's Exhibit No. 2 admitted)

8 Q. (By Ms. Balido) Now, Detective Myers, this is a
9 questionnaire that who prepared?

10 A. The questionnaire was actually prepared by my
11 supervisor.

12 Q. Okay. Who is that?

13 A. His name is Lieutenant Thompson.

14 Q. And so Lieutenant Thompson actually prepared this
15 document; is that correct?

16 A. That's correct.

17 Q. And what was the purpose of preparing this document?

18 A. Well, the purpose is to hopefully gather more
19 information or gather more evidence.

20 Q. And it's set out in sort of a letter like form; is
21 that correct? It's addressed to Mr. Jim Murphy?

22 A. Yes.

23 Q. And then on the end it's signed by a Cindy Hale; is
24 that correct?

25 A. That's correct.

1 Q. And Mr. Thompson or Lieutenant Thompson or whoever
2 he is over at Garland, he didn't actually sign this. You got
3 Cindy Hale to sign this; is that correct?

4 A. That's correct.

5 Q. Is she related to Ms. Cunningham in any way?

6 A. No, she is not.

7 Q. Not a member of the family or anything like that?

8 A. No, she is not.

9 Q. And she is certainly not the sister of the deceased
10 as well?

11 A. That's correct, she is not.

12 Q. I wonder if you will read along with me as I read
13 this document just to make sure I don't do anything or say
14 anything that's not in this document. Okay?

15 October the 10th, the year 2000. Now, that is after
16 Mr. Murphy has been arrested; is that correct?

17 A. Yes, it is.

18 Q. And it's before he was transferred to the Lew
19 Sterrett Jail; is that correct?

20 A. That's correct.

21 Q. And it was before he was appointed counsel that you
22 know of, is that correct, or did you know?

23 A. To my knowledge, yes.

24 Q. Okay. And he's already spoken to you once and given
25 you a written statement?

1 A. That's correct.

2 Q. And then you went back a second time and asked him
3 some additional questions and he gave you some additional
4 information?

5 A. That's correct.

6 Q. And this is the third time that you went to go talk
7 with him?

8 A. Yes, it is.

9 Q. Okay: It reads: "Mr. Jim Murphy, I am writing this
10 letter to you in hopes that you can shed some light on the
11 death of my sister. Detective Matt Myers told me that you
12 have been cooperating with him and have given him information
13 about the death of Bertie. Mr. Myers told me that you have
14 expressed sorrow for what you have done, and I appreciate
15 that. I, along with the rest of Bertie's family have
16 questions that Mr. Myers cannot answer, even though he has
17 told us all he knows. I am writing this letter in hopes that
18 you will answer my questions, which will give the family
19 peace of mind and closure in this matter. We loved Bertie
20 very much and we are hurting and grieving at this time.
21 Please help us heal by answering my questions. I am going to
22 list the questions below and give you a space to respond.
23 Mr. Myers will then deliver the letter to me after you have
24 responded. Thank you in advance for your help."

25 And so that's the first paragraph; is that correct?

1 A. Yes.

2 Q. Okay. So basically everything in that paragraph is
3 not true, based that it's written supposedly by the hand of
4 Cindy Hale; is that correct?

5 A. Well, it was not written by the hand of Cindy Hale,
6 no, ma'am.

7 Q. And she's not Ms. Cunningham's sister?

8 A. No, she's not.

9 Q. Did you discuss with the family before you did this?

10 A. No, we did not.

11 Q. The first question under the questionnaire is: Was
12 Bertie scared or mistreated when you made her give you a
13 ride?

14 And what did Mr. -- well, first, let me ask you
15 this: How did this go about? Was this kind of the same
16 situation that you had when you -- when you described the
17 first interview with Mr. Murphy, where you gave him the sheet
18 of paper and then walked out of the room, or did you stay in
19 there at this time?

20 A. No, I left him alone during this entire time.

21 Q. Okay. And again, you described that room as not --
22 you weren't able to see inside or anything like that; is that
23 correct?

24 A. That's correct. Same room.

25 Q. And so you weren't able to look in a peephole or any

1 sort of double-sided glass or mirror or anything like that?

2 A. No, I was not.

3 Q. Okay. So you left Mr. Cunningham (sic) in this
4 room. What instructions did you give to him?

5 A. Just explained the questionnaire to him, told him it
6 was a questionnaire from the family, that the family had some
7 questions, and would he be willing to look at it and respond
8 to the questions. He said that he would.

9 Q. Okay.

10 A. And he was then presented with the documents.

11 Q. Okay. And actually you did give him his Miranda
12 warnings before you had him sign this or look at this?

13 A. That's correct.

14 Q. Okay. Is it the regular practice of the Garland
15 Police Department to do this sort of thing?

16 A. Well --

17 Q. Or is this kind of new for y'all?

18 A. It's hard to say whether it's a regular practice. I
19 mean, we would use whatever tools we felt were necessary.
20 Cases are different. Different cases call for different
21 procedures. So it's the first time I've ever done that or
22 been involved in that.

23 Q. Okay. And so in this situation, what do you think
24 made this situation different, that this might be a tool that
25 might be to your advantage to use?

1 A. Well, I think that this was different in respect
2 that we still had a lot of questions that we didn't know the
3 answers to. So this was just -- this was just a tool that we
4 would use to try to obtain the answers to those questions.

5 Q. And is it also a tool that you could use to play on
6 somebody's sympathy maybe, or maybe somebody's emotions to
7 get the answers that you wanted?

8 A. Oh, I would say that's possible, yes.

9 Q. The first question in this questionnaire from the
10 family, "was Bertie scared or mistreated when you made her
11 give you a ride," and what was his answer?

12 A. It says, "Not at all."

13 Q. "Did Bertie talk to you and treat you well as we
14 think she would have done?" And what is his answer?

15 A. "Yes, she did."

16 Q. "When Bertie was killed, did she suffer?" Was there
17 any sort of answer to that?

18 A. There was no response to that question.

19 Q. "Can we get the rings back that Bertie was wearing?
20 The family is prepared to pay for the rings if you can tell
21 us who got them, the rings have sentimental value as well --
22 for me as well as the family." Is there any response to
23 that?

24 A. No response.

25 Q. "Bertie was a very religious person and I think that

1 she would pray for you. Did she pray while she was with
2 you?" What was his response to that?

3 A. "She had no reason to pray nothing was going to
4 happen."

5 Q. The next question is: "The family would like to put
6 up a cross or memorial stone either at the place you picked
7 Bertie up or the place that she died. We need your help to
8 get this done. Please tell me where you picked her up or
9 where she died. This would be a marker that we could put up
10 to show our love for Bertie, and that we still think about
11 her." And what was his response to that?

12 A. It says: "Sir or ma'am I'm very sorry for what has
13 happened to your family. I've destroyed many many lives from
14 this. I will continue to work with Mr. Myers so I can at
15 least give you peace, but as of right now I can't remember."

16 Q. Now, the next question is: "I know that Bertie
17 helped others who were in need. Did you tell Bertie that you
18 were in need of assistance, and is that why she tried to help
19 you?" And what was his response to that?

20 A. "I had all my luggage w/me so she knew I needed help
21 & once again I'm very very sorry for your loss ma'am. If I
22 could bring her back I would do it for you. This was a
23 horrible horrible accident & I'm sorry for causing you pain."

24 Q. And then this is a -- well, it's kind of -- it ends
25 with a question, but this is kind of the next little

1 paragraph before the signature: Mr. Myers told me that he
2 can not make you answer questions because of legal matters.
3 I fully understand that, but I am elderly like my sister,
4 Bertie, and this would help with me and my family deal with
5 our unanswered questions. Mr. Myers told me that he would
6 help me by presenting you with my questions. Mr. Myers told
7 me that he would let you sit in a room to respond and would
8 not interfere with your responses. I would also like to know
9 if you would respond to any other questions that I might have
10 at a later time?

11 Is that what that -- how that reads?

12 A. Yes.

13 Q. And it's signed Cindy Hale; is that correct?

14 A. Yes.

15 Q. And then at the very end, after the signature, Mr.
16 Murphy wrote some additional words; is that correct?

17 A. He did.

18 Q. And would you read those for us, please?

19 A. It says: I was told if I'm honest and ask for
20 forgiveness God will forgive me for what has happened and one
21 day I'll have more peace in my life as well. I will answer
22 any question I can to help you. Another bad thing.

23 Q. Okay. Now, there's another bad thing doesn't seem
24 to have a period at the end; is that correct?

25 A. There is not.

1 Q. Okay. And did you tell him to quit writing at that
2 time, or how did that occur?

3 A. No, he was never instructed to stop writing. I just
4 asked if he was finish or not.

5 Q. Okay. And you're saying that he said he was
6 finished then?

7 A. Yes.

8 Q. Okay. Did you talk to anybody at the Dallas
9 District Attorneys Office and ask them their advice as to
10 whether or not you should give him this supposed family
11 questionnaire before you gave it to him?

12 A. No, we did not.

13 Q. And this material was not part of the material that
14 was -- or the statement that was sent to the District
15 Attorneys Office to be included in any statements by the
16 defendant like Judge Cunningham ordered you to do in the
17 examining trial; is that correct?

18 A. No, I believe that document was included in the
19 packet when we filed the case.

20 Q. Okay.

21 A. Should have been.

22 Q. So it may have been sent to the District Attorneys
23 Office, but it -- that's as far as you know?

24 A. Yes.

25 Q. And -- was it apparent to you at the pretrial

1 hearing that we had before the trial began -- that occurred
2 on the Thursday before this trial began, that that was the
3 first time I had ever seen that document? Did that become
4 apparent to you?

5 A. You're going to have to ask me that again. I'm
6 sorry.

7 Q. Okay. When we had the hearing regarding any
8 statements made by the defendant. Okay?

9 A. Uh-huh.

10 Q. Did it become apparent to you at that time that the
11 first time that I or any member of the defense team knew
12 there was an additional questionnaire like this, that that
13 happened at that hearing? Or was that not apparent to you?

14 A. I'm really not sure when you were first aware of
15 that document. I don't know that.

16 Q. Was Mr. Murphy remorseful at that time, or did he
17 seem upset when he was filling out that questionnaire?

18 A. No, he was not.

19 Q. Okay. But you weren't with him the whole time?

20 A. That's correct.

21 Q. When you were investigating this case, there was --
22 I guess after the Richardson situation where Ms. Cunningham's
23 credit cards had been used by Mr. Murphy, but before Mr.
24 Murphy was actually taken into custody, there was a time that
25 there were a lot of calls coming in from different people in

1 the community as to who might have done this; is that
2 correct? Or is that not correct?

3 A. No, I don't think that -- no, I don't think we got a
4 lot of calls on the case.

5 Q. But were there -- there were calls that happened
6 during that period that came from Tonya Thorp; is that true?

7 A. There was a call, yes, from Ms. Thorp.

8 Q. Okay. And -- and some other members of the -- of
9 Mr. Murphy's family, like the Erwins and some other people;
10 is that true?

11 A. I don't think Mr. Erwin called, but I talked to Ms.
12 Thorp myself. I think Mr. Erwin's communication with the
13 Garland Police Department was through the -- through the
14 Terrell Police Department.

15 Q. Okay. You as the investigating officer, do you
16 remember ever getting a call from Chuck Shollenmer from out
17 in East Texas someplace, either Canton or any of those
18 places?

19 A. No, I did not.

20 Q. Okay. So you didn't -- so he or one of your other
21 investigating officers never told you that he had spoken to
22 Mr. Murphy the morning of the disappearance of Ms. Cunningham
23 and that he was very depressed that day?

24 A. I'd have to go back and look at my notes. The name
25 right now is not familiar to me, but there was a lot of names

1 during the course of that investigation -- his name may --
2 excuse me, may very well be in the notes. I'm just not --
3 I'm not familiar with it right now.

4 Q. Okay. So does the text of that conversation sound
5 very familiar to you?

6 A. Well, yeah, it does -- I think it probably -- there
7 is something in my notes about that, but it does ring a bell
8 to me.

9 Q. Now, you talked personally with Ms. Thorp during the
10 course of your investigation; is that correct?

11 A. That's correct.

12 Q. And you were also out at her house when the search
13 of her house was done; is that true or not true?

14 A. No, that's not true. I was not present at that
15 time.

16 Q. Okay. And so did you have more than one
17 conversation with her during the course of your
18 investigation?

19 A. Yeah, I think I had a couple that were personal face
20 to face and a couple, maybe one or two more on the telephone.

21 Q. Okay. And were you part of a search team that went
22 back additionally and picked up those brown hoses?

23 A. Yes.

24 Q. Okay. And where were those located?

25 A. They were in the garage.

1 Q. Okay. And why did you go back over there to go look
2 for those hoses in the garage?

3 A. Well, because Mr. Murphy had told us that -- of a
4 suicide attempt there, and we went there to gather evidence.

5 Q. Okay. And did you gather evidence?

6 A. Yes, we did, those hoses.

7 Q. Okay. Were they attached or not attached when you
8 got there?

9 A. Well, I'm not -- I'm not completely sure. I think
10 they might have been -- I think they were not attached, but
11 I'm not -- I'm not really sure about that.

12 Q. Okay. Were they in the boxes like they look like
13 they should have been, or were they just kind of out in the
14 garage, or can you recall?

15 A. I know that they were on the floor in the garage as
16 I recall.

17 Q. Okay. And did you see any damage to the -- that
18 looked like it could have been caused by heat or anything
19 like that that would lead to you believing that that part of
20 his story was consistent?

21 A. I don't recall that at all.

22 Q. Okay. Did you look for it?

23 A. I don't even recall looking for it actually.

24 Q. And all the times that you talked to Tonya Thorp,
25 and I believe that there were some members of the Garland

1 Police Department that were also talking to his mother at
2 some point; is that correct? Or do you know?

3 A. No, not to my knowledge.

4 Q. Okay. Well, let's just kind of focus on Tonya at
5 some point. In your first interview he mentioned something
6 of some sort of mental background or that he had been
7 hospitalized or something like that; is that correct?

8 A. I think it was actually during the second.

9 Q. Did you ever ask Tonya Thorp about that?

10 A. Actually when Mr. Murphy advised me of that, that's
11 one of the telephone conversations that I had with Tonya. I
12 did call her that evening to tell her that Mr. Murphy had
13 said that he wanted to see a doctor, a psychologist, and I
14 just was to call her to inform her of that.

15 Q. Did you ask her about any of his history then?

16 A. No, I did not.

17 Q. Okay. Ever ask anybody in his family about any
18 history like that?

19 A. No, I did not.

20 Q. You also noticed during his -- in your interview
21 with him that he actually had some damage to his hand; is
22 that correct? You actually saw it?

23 A. Yes.

24 Q. Okay. And one of the times that you went back to
25 see Tonya or over to Tonya's house, you actually also seized

1 a suicide note; is that correct? Was that when you also got
2 the hoses?

3 A. No, I think that was collected during the first
4 visit by the other officers.

5 Q. Okay. But there actually was a suicide note that
6 was -- that was tied into the hoses as well?

7 A. Yes, there was a note.

8 Q. And did you think it was his plan to kill himself
9 that day which was after the disappearance of Ms. Cunningham?

10 A. That's what he said.

11 Q. And did you feel like his writing a note and also
12 finding the hose in the garage, did you feel like that that
13 was an indication of perhaps his intention to -- for him to
14 commit suicide?

15 A. Can you ask me that again, please?

16 Q. Okay. Was finding the hose in the garage and having
17 seized the suicide note an illustration of -- to you as an
18 intention to commit suicide on the part of Mr. Murphy?

19 A. Well, possibly. I've worked a lot of suicides.
20 I've been to a lot of suicide calls. My general experience
21 with that is people that don't -- don't follow through with
22 it rarely do. If they threaten to commit suicide and don't
23 follow through with the act, then generally they don't do it.

24 Q. Do you remember in the examining trial answering
25 that question differently?

1 A. No, I don't.

2 Q. Okay.

3 MS. BALIDO: May I approach the witness.

4 THE COURT: You may.

5 Q. (By Ms. Balido) I'm going to start here on page 32,
6 and I'm going to start reading and just tell me if I'm not
7 reading it correctly. The answer was --

8 MR. DAVIS: I'm sorry, could we have a
9 question that was asked as part of this possible impeachment
10 here. I think that's the proper method.

11 THE COURT: Sustained.

12 Q. (By Ms. Balido) Okay. Is the question: Was that
13 an illustration of perhaps an intention to commit suicide?
14 And what was your answer?

15 A. It says: It was to me, yes.

16 Q. Now, let me ask you basically -- when you first got
17 to the -- well, to Treshod's house out in Edgewood and talked
18 to the defendant, you basically placed him under arrest at
19 that time; is that correct?

20 A. Yes.

21 Q. And he had already told his friend Jason Bonham
22 where Ms. Cunningham's body was found?

23 A. That was my understanding, yes.

24 Q. And then you took him down to the police station and
25 you read him his rights, correct?

1 THE COURT: Avoid repetition. We've gone over
2 this.

3 MR. DAVIS: I'm sorry --

4 Q. (By Ms. Balido) Basically every time you talked to
5 him, he gave you answers to your questions; is that correct?

6 A. To some of the questions, yes.

7 Q. Yes. And that was until the last time, and that was
8 after he talked to his lawyers; is that correct?

9 A. Well, we talked to him right up until the point
10 where he -- where he exercised his rights to not talk to us.

11 Q. Okay.

12 A. Which would have been on -- I forgot the date, of
13 the 13th or 14th.

14 Q. That was October 13th; is that correct?

15 A. 13th.

16 Q. So the first statement he made, he did not have a
17 lawyer at that time, he waived his rights and talked to you?

18 A. That's correct.

19 Q. The second time that you went to go talk to him, he
20 did have a lawyer at that time, but he waived his rights and
21 talked to you?

22 A. That's correct.

23 Q. And then you went back a third time and gave this
24 supposed family questionnaire; is that correct?

25 A. That's correct.

1 Q. And then the fourth time he told you that he didn't
2 want to talk to you again unless his lawyer was there?

3 A. That's correct.

4 MS. BALIDO: I'll pass the witness.

5 Cross-Examination

6 By Mr. Davis:

7 Q. Detective, let me just ask you with regards to Tonya
8 Thorp, did you have a conversation with Tonya Thorp about
9 alcohol or liquor being missing or taken from her home by the
10 defendant?

11 A. Yes, I did.

12 Q. What did you ask Tonya Thorp to do?

13 A. I asked her to check her residence to see if in fact
14 there was a bottle of alcohol missing from the residence.

15 Q. Okay. Did she come back later and tell you what she
16 had found?

17 A. Yes, she did.

18 Q. What did Tonya Thorp tell you just shortly after the
19 investigation began?

20 A. In regards to the missing alcohol?

21 Q. Yes, sir.

22 A. She said that -- that she was not able to really
23 locate any missing bottles.

24 Q. Now this -- this supposed suicide over at Tonya
25 Thorp's home, you don't know whether he made a serious effort

1 that day or not to commit suicide, do you?

2 A. No, I don't.

3 Q. But again, it's been your experience as a police
4 officer and dealing with suicide cases, that people who
5 threaten it but don't carry through generally don't follow
6 through with their threats, right?

7 A. Many times.

8 Q. Do you know how many times in this man's life that
9 he's threatened to commit suicide and then didn't follow
10 through?

11 A. No, I don't.

12 Q. You said with regards to the emotion that he showed,
13 is it unusual for individuals who come into the police
14 station who have been charged and confined on aggravated
15 offenses, such as capital murder or aggravated robbery or
16 something of that sort, is it unusual for them to show
17 emotion?

18 A. No, that's not unusual at all.

19 Q. Now, this -- this letter that you used as an
20 investigative tool with the defendant, let me ask you, as I
21 understood your testimony, he refused or failed to give a
22 response when he was asked whether this woman, Ms.
23 Cunningham, suffered; is that correct?

24 A. I'm sorry, you'll have to ask me that again.

25 Q. As I understood your testimony, the defendant did

1 not respond on that letter when he was asked whether Ms.
2 Cunningham suffered or not; is that right?

3 A. That's correct.

4 Q. And he also refused to respond when you asked for
5 the -- what had happened to her rings and jewelry, too,
6 didn't he?

7 A. No, he did not respond to that.

8 Q. Did he ever tell you what he had done with Ms.
9 Cunningham's jewelry?

10 A. No, he did not.

11 Q. Did he ever tell you why he went up there to
12 Washington Mutual ATM machine to use her credit cards?

13 A. No, not specifically.

14 Q. And when he told you that he could not give you an
15 abduction location for Ms. Cunningham, as you sit here today
16 do you think he was being honest and genuine when he said he
17 didn't remember?

18 A. No, I think he knows where the abduction site is.

19 Q. And when he said that -- when he met Ms. Cunningham,
20 he had all of his luggage with him, certainly that does not
21 comport with the account given by Kenneth Clance, the
22 bartender up there at Bleachers, who said he came in there
23 without anything that day, does it?

24 A. Well, I did not personally talk to Mr. Clance, so --

25 Q. And finally when he told you there at the bottom of

1 the form that he would answer any more questions that you
2 had, that wasn't true either, was it?

3 A. No, he didn't follow through with that. No, sir.

4 Q. In fact, the next time you tried to talk to him, he
5 did invoke his 5th Amendment privilege at that time, didn't
6 he?

7 A. Yes, he did.

8 Q. Now, sir, you knew by the time you approached him
9 with this letter, you already knew that he had lawyers,
10 correct?

11 A. That's correct.

12 Q. Did you know whether or not he'd had a chance to
13 talk with them there at the Garland City Jail?

14 A. Well, I knew he had met with them at least one time.

15 Q. So before he made those particular responses, you
16 know he had already talked with his lawyers at least one
17 time?

18 A. Yes, I know that. Yes.

19 Q. You don't know what advice he was given because all
20 those communications are confidential, aren't they?

21 A. That's correct.

22 MR. DAVIS: Thank you, sir. I'll pass the
23 witness.

24 Redirect Examination

25 By Ms. Balido:

1 Q. In regard to what you talked about to Ms. Thorp
2 about the missing alcohol, did you ask her about any
3 alcoholic beverages or just a bottle of champagne?

4 A. Well, actually as I recall we did ask her about a
5 bottle of champagne and I think two bottles of beer --

6 Q. Okay.

7 A. -- as I recall. I think she did come back and say
8 there was either one or two bottles of beer missing from the
9 house, but she -- she could not either -- she could not
10 confirm if any champagne was missing.

11 Q. Okay. And did you talk to -- about when did that
12 conversation take place?

13 A. When?

14 Q. Yes.

15 A. A date?

16 Q. Well, around the same week that you're having all
17 these conversations or two weeks later or a month later?

18 A. Oh, it was -- it was -- I think it was the same day
19 that we went and collected the hoses. I think that was the
20 only time I was at her house. I might have been there -- but
21 it would have been during that week. I may have been there
22 twice, but I think I was there only once.

23 Q. And in regard to where you found the hoses and that
24 sort of thing, there aren't any pictures of how the hoses
25 were laying or whether or not they were connected or anything

1 like that; is that correct?

2 A. That's correct.

3 Q. Okay. And is it usual when you're out collecting
4 evidence to first take a picture of it before you touch it or
5 move it so you can see how the actual location was?

6 A. Well, we would sometimes photograph evidence, but we
7 don't always do it.

8 Q. Okay. But sometimes that becomes important to the
9 jury as to where it's located and how it is found; is that
10 correct, Detective Myers?

11 A. It can be, yes.

12 Q. Okay.

13 MS. BALIDO: May I approach the witness,
14 Judge.

15 THE COURT: You may.

16 Q. (By Ms. Balido) Detective Myers, I'm -- well, hold
17 on a second.

18 (Defendant's Exhibit 69 marked)

19 Q. (By Ms. Balido) Detective Myers, I'm showing you
20 what has been marked previously as State's Exhibit 48 and
21 State's Exhibit 49, but that now been marked for
22 identification as Defendant's Exhibit 69, and I ask if you
23 recognize it?

24 A. Yes, I do.

25 Q. And what is it?

1 A. It is a -- the first page is a copy of the Miranda
2 warnings, and the second page is a hand drawn map.

3 Q. Okay. And my copy right here has a -- has the fifth
4 line of the first page taken off, but I believe that's in
5 evidence already. But is this the Miranda warning that you
6 gave and the second interview that you had with Mr. Murphy?

7 A. Yes.

8 Q. Okay. And the second page of this document is a
9 handwritten map; is that correct?

10 A. Yes, it is.

11 Q. Is that in your hand or in someone else's hand?

12 A. It has -- this is my writing here, but everything
13 else is in Mr. Murphy's writing.

14 Q. Okay. Did he draw this in response from a -- from a
15 request from you?

16 A. Yes.

17 Q. Okay. And what did you ask him to do?

18 A. I asked -- we were still trying to establish the
19 abduction location, so I asked him to draw a map as best he
20 could remember what the parking lot or what the area was.

21 Q. Okay. So now at this time you have taken him out in
22 northeast Dallas County and driven him around all sorts of
23 different locations; is that correct?

24 A. Previously.

25 Q. Previous to this?

1 A. Yes.

2 Q. And then you got a written statement from him in
3 regard to the location of this offense; is that correct?

4 A. Yes.

5 Q. And then you went back and asked him to draw you a
6 map; is that correct?

7 A. Yes.

8 Q. To the best of his ability; is that correct?

9 A. Yes.

10 Q. And he did that, didn't he?

11 A. Yes.

12 Q. Okay. Is there anything that you think he was
13 trying to be untruthful or was he trying to leave stuff out
14 to confuse you or do you think he was trying to actually
15 write down for you what he thought the location was?

16 A. I have no idea really if he was being truthful about
17 it or not.

18 Q. Okay. But there are actually cars and parking lots
19 and buildings and streets and townhouses and -- and where a
20 bus might be located on this map; is that correct?

21 A. Yes.

22 Q. Okay. After he got finished with this, did you tell
23 him to add anything else if you thought -- if he thought it
24 was important or try to spur his memory or jar his memory to
25 see if there was anything else he could add to help you?

1 A. I don't recall asking him that.

2 Q. Okay. And after this, that's when you went back and
3 gave him that questionnaire; is that correct?

4 A. This was -- this was during the second interview and
5 the questionnaire was during the third interview.

6 Q. And it's still your opinion that he was being -- he
7 was not being forthright and truthful?

8 A. I think he knows a lot of things he hasn't told us.

9 MS. BALIDO: I don't have anything further.

10 Recross-Examination

11 By Mr. Davis:

12 Q. Detective Myers, you never could find a location
13 that exactly matched the map the defendant drew for you, did
14 you?

15 A. No, we did not.

16 Q. But isn't it true there were -- there was at least
17 one location that you had very strong suspicion about based
18 on that map and what you knew about the case, wasn't there?

19 A. Yes, there was.

20 Q. Was that the Walgreen's Drug Store at the
21 intersection of Campbell Road and Plano Road?

22 A. Yes.

23 Q. Okay. That certainly is in Dallas County, isn't it?

24 A. Yes, it is.

25 Q. That's a location that the defendant had been to

1 prior -- prior to that date, isn't it?

2 A. He told me that he had.

3 Q. So the defendant was familiar with that location,
4 wasn't he?

5 A. He's very familiar with that.

6 Q. And certainly that would have been a location that
7 would have been on the way home for Ms. Cunningham driving
8 from Plano -- I mean, from Collin Creek Mall in Plano taking
9 Plano Road back down to her home in North Garland, too,
10 right?

11 A. Yes, she would have driven past there had she taken
12 the Plano Road route.

13 Q. And you know that Ms. Cunningham had stopped at that
14 same Walgreen's on other occasions, hadn't she?

15 A. Yes, the family told me she frequented that drug
16 store.

17 MR. DAVIS: Thank you, sir. That's all I
18 have.

19 Further Redirect Examination

20 By Ms. Balido:

21 Q. So he admitted to you that he had been at that
22 location?

23 A. Yes.

24 Q. Okay. And that was a response to a question that
25 you asked?

1 A. Yes.

2 Q. Trying to find out where this -- where this
3 occurred?

4 A. Yes.

5 MS. BALIDO: I don't have any more questions,
6 Judge.

7 MR. DAVIS: No further questions, sir.

8 THE COURT: You may step down, sir.
9 You may call your next witness.

10 MS. LITTLE: Call Tracy Erwin.

11 MR. DAVIS: May this witness be excused?

12 MS. BALIDO: No objection, Judge.

13 THE COURT: You may be excused. You may
14 remain in the courtroom or be excused.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Raise your right hand, please.

17 (Witness sworn.)

18 TRACY ERWIN

19 was called as a witness by the Defendant and, after having
20 been first duly sworn, testified as follows:

21 Direct Examination

22 By Ms. Little:

23 Q. State your name, please, ma'am.

24 A. Tracy Erwin.

25 Q. Tracy, where do you live?

1 A. Edgewood, Texas.

2 Q. And how long have you lived there?

3 A. All my life just about.

4 Q. Are you married, and do you have a family?

5 A. Yes.

6 Q. About how long have you been married?

7 A. For almost 20 years.

8 Q. And your husband is in the hall as well; is that
9 right?

10 A. Yes, ma'am.

11 Q. And what is his name?

12 A. Tim.

13 Q. And how many kids have you got, Tracy?

14 A. We have four children.

15 Q. And how old are they?

16 A. 18, 16, 14, and 23 months.

17 Q. And one about to go to A&M; is that right?

18 A. Correct.

19 Q. Do you know Jim Murphy?

20 A. Yes, I do.

21 Q. His actual legal name is Jedidiah Isaac Murphy; is
22 that correct?

23 A. Correct.

24 Q. Where did that name come from, Tracy?

25 A. They chose that name when my mom and stepfather

1 adopted him.

2 Q. Okay. Was that a name in your stepfather's family?

3 A. Yes, ma'am.

4 Q. And so you've known Jim since he was how old?

5 A. Approximately 12 years old.

6 Q. Were you living in the home at that time?

7 A. No, I was not.

8 Q. But you had grown up in the home?

9 A. Yes, I had.

10 Q. And Bob Murphy was your stepfather?

11 A. Yes.

12 Q. Will you tell the jury a little bit about your life
13 in the home when you were still living with your mother and
14 your stepfather?

15 A. Well, it was kind of a up and down home. We had
16 happy times, but we also had hard times. He was very strict,
17 not with me, but with the boys and with my mother. And he
18 was abusive to my mother at times.

19 Q. Did he -- did your brother Matt -- was he close to
20 Jim?

21 A. Yes.

22 Q. In fact, did they -- did they have a lot of other
23 friends, or did they just cling together?

24 A. They had friends, but they didn't do a whole lot
25 with friends. They didn't go with friends, and friends

1 didn't come over to the house that often.

2 Q. Why was that?

3 A. It seemed that there was always things that they had
4 to do or pretty much that, they just -- I don't know why I
5 questioned it at times, but I never really knew exactly why,
6 but they had each other. I knew they had each other, and so
7 I felt like at least they had each other.

8 Q. Uh-huh. Now, you said that your stepfather was a
9 very strict man. How was he strict with the children?

10 A. He just run -- he ran a tight -- he held a tight
11 rope. He had a short temper, and I was -- I feared him, and
12 I felt like they feared him.

13 Q. Was there any drinking problem in that household?

14 A. He didn't have a drinking problem, but he did drink
15 at times because he played golf and he was around it some.
16 And if he did drink, his temper was worse.

17 Q. Okay. What sort of corporal punishment was meted
18 out, if any, in the home?

19 A. Mainly they -- they would be grounded if he -- I've
20 seen him at times throw items or push or point in the chest
21 real hard. That's all I can remember, but -- he was hard on
22 them.

23 Q. Okay. Now, when -- when your mother and he divorced
24 that last time, Jim ultimately went with him; is that right?

25 A. That's correct.

1 Q. Did -- whether there was going to be child support
2 paid have anything to do with that?

3 A. I felt like it did.

4 Q. Tell the jury what you mean.

5 A. I felt like Jim was a pawn used between them for the
6 divorce.

7 Q. And that's because Matt went with your mother?

8 A. Matt went with mother. There was no doubt that he
9 was going to go with my mother. And if Jim went with Bob,
10 then there wouldn't be child support paid.

11 Q. And then once Jim went with Bob, do you know if
12 there was any real supervision of any kind?

13 A. I do not feel like there was. I know he was left
14 alone quite a bit.

15 Q. With Shod Tarrant?

16 A. I know he was with Shod at times. I'm not real sure
17 how often.

18 Q. Did you know anything about Jim having a drinking
19 problem?

20 A. He did not have a drinking problem before he went
21 with Bob. I know he started -- I know he told either my
22 mother or Matt that -- that he did after that, but I don't
23 know when and I don't know exactly what he said.

24 Q. Are you aware that he complained of the treatment at
25 the Tolar's from the time he got to your parents' home?

1 A. Yes, I am.

2 MS. LITTLE: That's all I have. Thank you.

3 Cross-Examination

4 By Mr. Davis:

5 Q. Ms. Erwin, you love the defendant very much, don't
6 you?

7 A. Who? Pardon?

8 Q. The defendant? You love him very much, don't you?

9 A. Yes, I do.

10 Q. You don't want him to receive the death penalty in
11 this case, do you?

12 A. No, I do not.

13 MR. DAVIS: That's all I have, Judge.

14 MS. LITTLE: Thank you.

15 THE COURT: You may step down.

16 MS. BALIDO: May she be excused?

17 MR. DAVIS: No objection.

18 THE COURT: You may be excused, if you wish.

19 MS. LITTLE: Tim Erwin.

20 THE COURT: Raise your right hand, please,
21 sir.

22 (Witness sworn.)

23 TIM ERWIN

24 was called as a witness by the Defendant and, after having
25 been first duly sworn, testified as follows:

Direct Examination

By Ms. Little:

Q. State your name, please, sir.

A. Bear with me. I'm going to try to do my best. Tim Erwin.

Q. Tim, you live in East Texas, too. I can tell by your accent.

A. Yes, ma'am, I do.

Q. Okay. Have you always?

A. Yes, ma'am.

Q. And you're married to Tracy who was just in here?

A. Yes, ma'am.

Q. Did you have some experiences with Jim Murphy?

A. Yes, ma'am, I did.

Q. When he was a fairly young guy?

A. Yes, ma'am.

Q. What was your experience with him?

A. For the most part, it was all good experiences. I never had any trouble with him. I coached him in Little League, camped out together, fished. I have a lawn care service, also. He's probably one of the best workers I ever had help me, real hard worker.

Q. And you've known him since he was how old?

A. I believe he was like 11 or 12 years old. And --

Q. Did you have him come to your house when he first

1 got there to the Murphy's?

2 A. Yes. He came over to the house several times.

3 Q. And did he seem to enjoy that?

4 A. Yes. You know, the first experience -- you know, he
5 came over and I put him on a horse, bareback, told him it
6 wouldn't buck, and of course it bucked him all over the
7 pasture and got a good laugh out of it. But, you know, I'm
8 kind of a little practical joker, like to cut up and stuff,
9 and we kind of had a little bond there after that, you know.
10 I know some of y'all might not understand it, but, you know,
11 when you do stuff like that together, two guys get out and do
12 stuff like that.

13 Q. Okay. And you coached him through Little League?

14 A. Yes, ma'am.

15 Q. And did you see any signs of problems for him at
16 that time?

17 A. Not anything different than anybody else. I mean,
18 when they get to be teenagers, I've got three of them at the
19 house now that drive you crazy, but he wasn't anything really
20 any different than anybody else.

21 Q. You know Shod Tarrant as well, do you not?

22 A. Yes, ma'am.

23 Q. Could you say the same for him?

24 A. No, ma'am. I don't want to talk bad about nobody,
25 but I guess I don't really have anything good to say about

1 him.

2 Q. Did you have an opportunity to observe any of the
3 discipline that went on in the Murphy household regarding Jim
4 and/or Matt?

5 A. Well, you know, it was -- I guess a lot of hearsay.
6 I didn't actually see a whole lot going on, but you could
7 hear, you know, his -- it was pretty strict over there at the
8 house, you know. Sometimes I thought they could have had a
9 little bit more leniency that they didn't get, that they
10 should have got, but that's not my deal, you know. It's not
11 my avenue. But I know every time him and Matt both came over
12 to the house, you know, I kind of like to laugh and cut up
13 and have a good time because you never know which is your
14 last day and I like to live everyday like it's your last.

15 Q. You're a fireman, are you not?

16 A. Yes, ma'am, I've been on for 18.

17 Q. Were you aware of a time when Matt actually struck
18 his father in the face?

19 A. Yes, ma'am, I believe it was real late in the night
20 one night, he called over at the house.

21 Q. Do you know what precipitated that?

22 A. I might have before I walked up here on this stand.
23 I don't really know. I sure don't. I just know there was a
24 confrontation.

25 MR. DAVIS: I'm sorry --

1 THE COURT: Sustained.

2 Q. (By Ms. Little) Without talking about anything more
3 to do with it, did you go over to Ms. Cunningham's church?

4 A. When it all happened, and I'm not trying to just sit
5 up here and babble, but I'd like to kind of say my piece up
6 here. When it first happened, I was shocked. I couldn't
7 believe it. I was at the fire station out on a fire when I
8 saw it on the news. And I was deeply saddened. I cried this
9 morning coming in to work about the Cunningham family, and
10 you just don't know how hard it bothered me. And me and my
11 daughter and my son carried two sprays of flowers over to the
12 church to let them know we're sorry for what happened. You
13 know, we're not all a crazy family and this was just a side
14 of Jim that happened I never seen. I didn't know about it.
15 And I wanted them to know that. The Sunday school class
16 welcomed me in and talked to me. And then I went and saw Jim
17 and I didn't say anything he done was right. It was a
18 horrible thing to do. And I said the only thing I can tell
19 you to do is get yourself right with the Lord because, you
20 know, you're going to have to take what's coming, but -- and
21 I hope he's got everything right now.

22 Q. But the Jim that you knew would not -- was not the
23 Jim that would do something like this?

24 A. No, ma'am, it caught me off guard.

25 Q. Okay.

1 MS. LITTLE: Thank you. That's all I have.

2 Cross-Examination

3 By Mr. Davis:

4 Q. Mr. Erwin, how old are your kids now?

5 A. I got a daughter fixing to go to A&M. She's just
6 graduated, 18. Here I am going to get in trouble again.

7 Q. You just take your time. Okay?

8 A. 16. One has already had a wreck, just got her
9 license. And a 14-year-old son. And then I have a
10 2-year-old surprise. Vasectomies don't work.

11 Q. Mr. Erwin, do you think that any of your kids have
12 probably complained about you being too strict? You know how
13 teenagers are?

14 A. Oh, they say I babble a lot and I know y'all
15 probably saying that yourself while I'm sitting up here, but,
16 you know, I like to look at two sides of the spectrum, kind
17 of get their input. I know people are kids, too. A long
18 time ago I thought you can't wait to get to be an adult
19 because you're smart. And I figured out there's some people
20 that don't ever get smart, little kids are just as smart as
21 they are so --

22 Q. Sometimes --

23 A. -- sometimes.

24 Q. Sometimes kids think they know better than their
25 parents, don't they?

1 A. A lot of times.

2 Q. Shod Tarrant, to your knowledge, he's never
3 kidnapped anybody, has he?

4 A. Not to my knowledge.

5 Q. He's never put a gun up to somebody's head just for
6 fun and asked them if they're afraid to die, has he?

7 A. Not to my knowledge. I -- I didn't hang around him.

8 Q. I mean, to your knowledge, he's never -- never
9 killed an 80-year-old woman, has he?

10 A. No, sir, not that I know of.

11 Q. As far as you know, he didn't force the defendant to
12 hang around him back when they were growing up either, did
13 he?

14 A. No. I've answered your questions. I know what --

15 Q. Now, you love the defendant very much. That's
16 obvious. Correct?

17 A. Yes, sir, it's hard to -- when you get shell-shocked
18 or something like this, you can't just turn your back.

19 Q. And I mean that's been true since you've -- since
20 you've known him, isn't it?

21 A. Yes, sir.

22 Q. Has there ever been a time that you haven't been
23 available for this man if he needed help?

24 A. No, sir, I've tried to be there. He come by
25 periodically, checked by.

1 Q. So if he'd come to you and said, Tim, you know, I've
2 got a problem and would you please help me with it, you
3 certainly wouldn't have turned your back on him, would you?

4 A. No, sir.

5 MR. DAVIS: Thank you, sir. Pass the witness.

6 Redirect Examination

7 By Ms. Little:

8 Q. Did you ever know Tim that he had any kind of
9 drinking problem?

10 A. He came by the house a couple of times, and he
11 showed me his wife, his baby, said he had a good job, showed
12 me his car. He was tickled to death, and all he wanted was a
13 pat on the back, tell him what a good job he was doing and I
14 tried to do that. Then it wasn't too long after that he came
15 by and he was pretty well soused and I told him he needed to
16 get off the liquor. He said it was kind of like when he
17 drinks, everything is okay, kind of it gives him a security
18 blanket. And I told him that that security blanket isn't
19 going to last long, he needs to get off of it. I'm sorry.

20 MS. LITTLE: That's all.

21 MR. DAVIS: No further questions.

22 THE COURT: You may step down, sir.

23 Defense may continue.

24 MS. BALIDO: Can we have just one second,
25 Judge? I'm sorry. Judge, if I can have two seconds.

1 MS. LITTLE: Judge, subject to offering the
2 remainder of photographs that were admitted before the jury,
3 we will be resting.

4 (Defense Rests in Punishment)

5 MR. DAVIS: The State's ready, Your Honor.
6 The State will call Terry Tolar.

7 THE COURT: Mr. Tolar, ask you to raise your
8 right hand, please, sir.

9 (Witness sworn.)

10 THE COURT: Have a seat to my left, please.

11 TERRY TOLAR

12 was called as a witness by the State and, after having been
13 first duly sworn, testified as follows:

14 Direct Examination

15 By Mr. Davis:

16 Q. Sir, first of all, would you please state your name?

17 A. My name is Terry Tolar.

18 Q. Mr. Tolar, where do you -- where do you live at this
19 time?

20 A. I live at 1219 Van Zandt County Road 1803 in Grand
21 Saline.

22 Q. How are you employed?

23 A. I'm employed with the Tyler Fire Department.

24 Q. How long have you been with the Tyler Fire
25 Department?

1 A. A little over 18 and a half years now.

2 Q. Are you married?

3 A. Yes, I am.

4 Q. And your wife's name is what?

5 A. Celeste.

6 Q. How long have you been married to Celeste?

7 A. 31 years.

8 Q. Do you have children?

9 A. Yes, we have three sons.

10 Q. Okay. And if you would, would you please give us
11 their names and ages?

12 A. Oldest son is Terry Jr., he's 29; Jeremy is 27; Eric
13 is 24.

14 Q. Do they still live in the Van Zandt County area?

15 A. No, they don't. Eric does, but Terry Jr. and Jeremy
16 live in the Metroplex area.

17 Q. Okay. They employed?

18 A. Yes, they are.

19 Q. Your children married?

20 A. One is married, my oldest one, yes.

21 Q. Sir, how long have you personally lived in Van Zandt
22 County?

23 A. Since 1966.

24 Q. And where did you move from?

25 A. I moved from Pasadena, Texas, area.

1 Q. Did your family move from that area while you were a
2 child?

3 A. Yes, sir.

4 Q. Do your parents still live in Van Zandt County?

5 A. Yes, they do.

6 Q. You know the defendant in this case, Jedidiah Isaac
7 Murphy, don't you?

8 A. Yes, sir, I do.

9 Q. I guess you came to know him when his name was Jim
10 Ed Kines; is that right?

11 A. That's correct.

12 Q. Directing your attention back to 1983, do you
13 remember how the adoption of the defendant came about?

14 A. Jim's relative -- I don't remember if -- exactly
15 if -- I think she was a cousin to his mother. I'm not --
16 I'm not exactly sure. The lady's name was Pam Sherman. She
17 was a good friend of ours. She came to us telling us about
18 Jim and his brother Donnie.

19 Q. Okay. Now, when Pam Sherman came to you and your
20 wife, were y'all actively seeking more children?

21 A. No, we were not.

22 Q. I mean, you already had your three sons, didn't you?

23 A. Yes, sir, we did.

24 Q. And did she ask you to consider taking in Jim and
25 his brother Donnie?

1 A. At first it was just Donnie. She initially talked
2 to us about taking him in.

3 Q. And did she later ask you to consider taking in Jim,
4 too?

5 A. Yes, sir, she did.

6 Q. When she -- when she came to you with those
7 requests, did you decide that you needed to do something
8 before you made that decision whether to take these two boys
9 in or not?

10 A. Yes, sir, we did.

11 Q. Could you tell the jury what did you and your wife
12 do before you made that decision?

13 A. My wife and I really sat down and did a lot of
14 praying and discussing with our pastor about what we should
15 do. And the requirements the boys would need and the things
16 we would need to do to take care of them, and that's what we
17 did.

18 Q. And did you finally come to a decision that you
19 would take both of these boys in?

20 A. Yes, sir, we did.

21 Q. Had you come from a large family yourself?

22 A. Yes, sir, I did.

23 Q. How many brothers and sisters did you grow up with?

24 A. I grew up with eight brothers and three sisters.

25 Q. So I guess five children actually be less than you

1 grew up with, right?

2 A. That's correct.

3 Q. And was there a time then when actually both the
4 boys then moved into your home?

5 A. Yes, sir, they did.

6 Q. In Grand Saline?

7 A. Yes, sir.

8 Q. How did -- how did the defendant seem to react to
9 moving into your home?

10 A. He seemed to take the move quite well.

11 Q. What kind of indications did you have that the move
12 was good for him and he enjoyed it?

13 A. He just seemed to blend in real well with my sons.
14 We just -- we tried to treat them exactly the same as we did
15 our own children.

16 Q. As a matter of fact, you changed his name from Kines
17 to Tolar, didn't you?

18 A. Yes, I did.

19 Q. Y'all went through a formal adoption process, didn't
20 you?

21 A. Yes, sir.

22 Q. Did you -- after these two boys had been adopted and
23 they were living in your home, did you make an effort to
24 include them and to treat them like you had your other three
25 sons?

1 A. Yes, sir, we did.

2 Q. Okay. Can you tell the members of the jury why that
3 was important to you to have these two boys feel like they
4 were really a part of your family?

5 A. We felt like if we were going to take the boys in,
6 that they needed to be part of the family. That's the main
7 reason we took them in, so they would have a complete family
8 unit.

9 Q. If the family was going to do something, were they
10 left behind or were they made a part of the activities?

11 A. No, sir, everyone was always included.

12 Q. I take it that when you took these two boys in, you
13 and your wife and your boys were already attending church and
14 Sunday School, weren't you?

15 A. Yes, sir, we were.

16 Q. Where did you attend at that time, Mr. Tolar?

17 A. We attended Main Street Baptist Church.

18 Q. When Jim and Donnie became a member of the family,
19 did you see to it that they also attended church with you as
20 a family?

21 A. Yes, sir.

22 Q. Did they attend Sunday School with the three boys?

23 A. Yes, sir, they did.

24 Q. Did you -- in addition to the training that they
25 received in the church, did you make it a point to try to

1 teach them the difference between right and wrong?

2 A. Yes, sir, we did.

3 Q. Were there other occasions where there was
4 activities outside the school that you made sure they were a
5 part of?

6 A. Yes, sir.

7 Q. Can you tell the members of the jury what other
8 kinds of activities that you made sure the defendant and
9 Donnie were included in?

10 A. They participated in the summer baseball league.
11 Jim was also in a children's choir at the Methodist church
12 that they had. It was a very good program. He really seemed
13 to enjoy it, also.

14 Q. The medical records from Dr. Ingram indicate that
15 he -- that the defendant went to him one time for a physical
16 to attend a Scout camp. Were there that type -- were there
17 those type activities, too, that the defendant was allowed --

18 A. Yes, sir.

19 Q. -- to participate in?

20 A. Yes, sir.

21 Q. Did you have discussions with the defendant about
22 drinking alcohol?

23 A. Yes, sir, I did.

24 Q. When -- when the defendant came to your home, you
25 were made aware that his father was an alcoholic; is that

1 right?

2 A. Yes, sir.

3 Q. And can you tell the members of the jury what kinds
4 of conversations that you had with the defendant about the
5 subject of alcohol use and drinking?

6 A. We just made it known that we really didn't find
7 that to be a conduct that was good, not because of his father
8 or anything, but because I have a brother and a
9 brother-in-law that are alcoholics. And I used those as a
10 point to not pattern your life after that.

11 Q. So you had experienced the same issues in your own
12 home, hadn't you?

13 A. Yes, sir, we had.

14 Q. Do you remember what reaction the defendant had when
15 you said that you didn't allow the use of alcohol in your
16 home?

17 A. Not really. I don't think there was any reaction,
18 positive or negative.

19 Q. Was the defendant enrolled in school there?

20 A. Yes, sir, he was.

21 Q. He would have been about how old when he came into
22 your home, sir?

23 A. I think he was getting close to about 9 years old.
24 I believe that's --

25 Q. In all how long did he stay in your home?

1 A. A little less than three years.

2 Q. How did he seem to do in school?

3 A. Just basically kind of an average student.

4 Q. Uh-huh. Did you keep up with his school work?

5 A. Yes, sir, we always watched the boys' work, helped
6 them keep up.

7 Q. So if he had homework or tests or something like
8 that, would you and your wife be available to try to help him
9 or to work with problems with him?

10 A. Yes, sir.

11 Q. And did both of you do that with him?

12 A. Yes, sir, we did.

13 Q. Now, Donnie, when he came into your home, did it
14 become apparent that he had certain behavioral problems?

15 A. Yes, sir.

16 Q. What sort of behavioral problems did Donnie have?

17 A. Donnie was finally diagnosed with you hyperactive
18 attention deficit disorder.

19 Q. Did you try to seek out some treatment for Donnie?

20 A. Yes, sir. Donnie was -- saw a medical physician
21 that put him on Ritalin, and we also had counseling for
22 Donnie almost throughout the entire time we had the boys.

23 Q. Was there any time when the defendant required
24 medical treatment for any behavioral problems?

25 A. No, sir.

1 Q. Did he ever require any counseling for behavioral or
2 emotional problems?

3 A. The only counseling that he got would be just when
4 the family as a whole went for counseling in connection with
5 Donnie.

6 Q. When you say the whole family, certainly would that
7 include you and your wife?

8 A. Myself, my wife, and my three sons, also.

9 Q. So your other three sons would go and attend these
10 sessions, too?

11 A. When the counselor requested them, yes, sir.

12 Q. Can you give us some examples of problems that you
13 had with Donnie's behavior while he was in the home?

14 A. Donnie would want something and would just throw a
15 temper tantrum, the most basic of terms, to get it. We tried
16 everything we could to try to get him to stop that behavior,
17 but we never found anything that would affect it.

18 Q. What forms of discipline did you use or try to use
19 with Donnie?

20 A. We did use spanking. We used putting him in a
21 corner, time-outs, putting him -- making him go to a room by
22 himself. It just -- anything the counselors could think of
23 to suggest to us we would use.

24 Q. Now, did you discipline your other three children,
25 your other -- our natural children?

1 A. Yes, sir.

2 Q. What forms of discipline would you use with your own
3 children?

4 A. Normally we used spanking, but sometimes we would
5 send them to a room.

6 Q. What forms of discipline would you use with the
7 defendant while he was in your home?

8 A. A spanking or sometimes sent to his room.

9 Q. Same type of discipline that you used on your own
10 three natural children?

11 A. Yes, sir.

12 Q. Moving back to Donnie, was there ever -- was there
13 ever a time when he became violent when you tried to use one
14 of these forms of discipline with him?

15 A. Yes, sir, he became violent. He tore a door off the
16 bathroom.

17 Q. Can you tell the members of the jury a little more
18 about how that came about?

19 A. The counselor had said that we needed to prepare a
20 room in the house to put Donnie in, to isolate him for 30
21 minutes at a time when it required it, for him to calm down.
22 And this particular occasion he refused to go into the
23 bathroom. I had to physically pick him up, hold his arms and
24 legs together enough to get him inside the bathroom. I shut
25 the door. And he just threw himself against the door to the

1 point that he tore the door into about three pieces and came
2 out of the room. He actually did that.

3 Q. Going forward, 1986, which would be approximately
4 three years after the boys came into your home, had Donnie's
5 problems, behavioral problems subsided or were they
6 continuing?

7 A. They were continuing. If anything, they were
8 progressively worse.

9 Q. Did you see whether his behavioral problems were
10 having a negative impact on the rest of the family?

11 A. Yes, sir.

12 Q. What were your conclusions?

13 A. After more interaction with counselors, our
14 counselor finally -- we had at the time finally told us we
15 could make a choice. We could keep Donnie, or we could loose
16 our whole family. It was the counselor's conclusion that if
17 we kept Donnie in the family, that we -- our whole family
18 would disintegrate.

19 Q. After the counselor told you that, did you have a
20 discussion with Jim and Donnie about -- about how to resolve
21 this situation?

22 A. Yes, sir, we did.

23 Q. And can you tell the jury what you discussed with
24 them?

25 A. We told the boys that we were going to have to put

1 them in the Van Zandt County Children's Shelter, that we had
2 tried everything we knew to get the family unit to stay
3 together, to, you know, create a family atmosphere for them
4 that they could live with. And that Donnie couldn't live
5 with it. He would do -- he would act out, flare up, then he
6 would say he was sorry, and within two minutes be doing the
7 same thing again.

8 Q. Had you seen any changes in the defendant's behavior
9 from 1983 to 1986? Had it stayed the same, gotten better, or
10 had it deteriorated, also?

11 A. Jim's behavior stayed fairly constant.

12 Q. All right. So you told the boys that Donnie had to
13 leave, right?

14 A. Yes, sir.

15 Q. Was there any decision on forcing the defendant to
16 leave your home?

17 A. No, sir.

18 Q. Was he still welcome in your home?

19 A. Yes, sir.

20 Q. Was he told that?

21 A. Yes, sir.

22 Q. Was he given the choice to stay in your home or to
23 go with Donnie to the children's shelter?

24 A. He basically made that decision on his own. He told
25 us he would not stay. He was staying with his brother.

1 Q. How did that make you feel, Mr. Tolar?

2 A. It hurt quite a bit.

3 Q. How so?

4 A. We really felt that Donnie had severe problems that
5 we weren't going to be able to address, but we thought that
6 Jim could really make something of himself and could really
7 be a member of the family and had tried to be a member of the
8 family.

9 Q. Were you happy with Donnie having to leave your
10 home?

11 A. No, sir, we were not.

12 Q. And finally, around New Year's of 1987, did you and
13 your wife finally take both Jim and Donnie to the Van Zandt
14 County Children's Center there in Fruitvale?

15 A. Yes, sir, we did.

16 Q. Do you know whether or not your wife went up to the
17 shelter later to see the boys and visit with them?

18 A. Yes, sir.

19 Q. Did she?

20 A. Yes, sir, she did.

21 Q. Do you know how many time she tried to see the
22 boys?

23 A. They were numerous times.

24 Q. While the -- while the defendant was with you, was
25 his family doctor Dr. Richard Ingram?

1 A. Yes, sir, we visited Dr. Ingram and probably also
2 visited Dr. Sherbert.

3 Q. While he was in your home, did the defendant suffer
4 any major health problems?

5 A. No, sir, he did not.

6 Q. Did he -- did he suffer from attention deficit
7 disorder while he was in your home?

8 A. To the best of my knowledge, he did not.

9 Q. Was he dyslexic when he was in your home?

10 A. No, sir, I don't believe he was.

11 Q. Did you keep up with his medical history after he
12 left your home?

13 A. No, sir, we didn't.

14 Q. Did you become aware later that he had moved into
15 the Murphy home in Edgewood?

16 A. Yes, sir.

17 Q. Did you know Bob Murphy and his wife?

18 A. We only met through the adoption process.

19 Q. Sir, let me ask you, did you in any way ever abuse
20 Donnie Tolar while he was in your home? Either physically,
21 psychologically, or sexually abuse Donnie Tolar?

22 A. There was never any psychological and definitely no
23 sexual abuse of Donnie. In retrospect, I believe that there
24 may have been one or two occasions when Donnie was
25 disciplined physically more than he should have been.

1 Q. And in what way?

2 A. In that in -- this is -- it wasn't uncommon for
3 Donnie to have to be disciplined 10 or 12 times a day. And I
4 think that there were maybe two times that it just -- I got
5 to the end of my rope with him and I lost more control than I
6 should have.

7 Q. What did you do to him when you finally lost
8 control?

9 A. There would be maybe more spanking than there should
10 have been, but nothing more than that.

11 Q. Let me ask you, with regards to the defendant in
12 this case, did you ever physically, psychologically, or
13 sexually abuse him?

14 A. Never.

15 Q. Was there ever a time -- looking back now in
16 retrospect, was there ever a time that you used excessive
17 discipline or force with Jedidiah Murphy?

18 A. No, sir, never.

19 Q. Was there ever a time, for instance, when you -- you
20 and your wife refused to feed him?

21 A. No, sir.

22 Q. Was there ever a time when you and your wife refused
23 to let him back in the house and forced him to stay outside,
24 for instance?

25 A. No, sir.

1 Q. Did you ever -- did you ever use bed slats to spank
2 him with?

3 A. No, sir.

4 Q. Did you ever kick him?

5 A. No, sir.

6 Q. Mr. Tolar, is it easy for you to come down here
7 today and testify in this matter?

8 A. No, it's extremely difficult.

9 Q. You still have some feelings for the defendant,
10 don't you.

11 A. I still have extreme affection for Jim.

12 MR. DAVIS: Thank you, sir. I'll pass the
13 witness.

14 Cross-Examination

15 By Ms. Little:

16 Q. Mr. Tolar, we met just a little while ago here in
17 the courtroom, did we not? I'm Jane Little. I just have a
18 couple of questions for you, really.

19 You had your three sons. Are you still close to
20 those boys?

21 A. Yes, ma'am, we are.

22 Q. They come for holidays and everything?

23 A. Yes.

24 Q. All of them?

25 A. Just normally, on -- as a rule, yes, all three would

1 be around for holidays.

2 Q. Was there ever a time when you left the house and
3 Donnie was not home?

4 A. I can't think of a time specifically right now, no,
5 ma'am.

6 Q. What I'm looking to here, Mr. Tolar, is, you know,
7 the perception of a child who has already been abandoned
8 once, so you see where I'm coming from?

9 A. Yes, ma'am.

10 Q. You took them in, and you don't ever recall a time
11 when Donnie wasn't there, so you left?

12 A. I really can't say that.

13 Q. Now, you said time-out. What would that mean in
14 your home?

15 A. That would mean either going over into an area of
16 the room by yourself, away from the television or the radio,
17 anything like that, or going to your room.

18 Q. And when they went to their rooms, were they locked
19 in there?

20 A. Donnie was, under the guidance of the counselors.

21 Q. Did you ever sit on them?

22 A. We might have been playing and rolling around and
23 something like that, but as far as sit on them to punish
24 them, no, ma'am.

25 Q. It sounds to me like Donnie was more than a handful

1 so I'm just trying to understand what went on. Did you --
2 did you ever do punishments where maybe some kids got Cokes
3 and others only got water as a way of, you know, showing
4 disapproval of behavior?

5 A. No, ma'am.

6 Q. Or were there differences in the hours they went to
7 bed, your children and the adopted two?

8 A. The only differences in hours they went to bed would
9 be according to age.

10 Q. Now, Donnie was, I think, maybe -- Donnie might be
11 28 now. You said your oldest son was 29?

12 A. That's correct.

13 Q. And then Jim was born September 1st of 1975, so
14 he'll be 26 in September. And your other boys -- let's see
15 what did you tell me? Jeremy is 27 now?

16 A. I believe that's correct.

17 Q. And Eric is 24; is that right?

18 A. I think that's correct.

19 Q. So how would -- who went to bed first and who
20 didn't?

21 A. The older ones would stay up a little later.

22 Q. And would that -- so that would be Terry?

23 A. Yes.

24 Q. And I guess Donnie? Would that be right?

25 A. That would be correct.

1 Q. What time would the older boys go to bed?

2 A. There was like 30 minutes difference between the bed
3 times.

4 Q. Now, you -- you've been a fireman all these years.
5 What kind of -- I guess the shifts there are just like they
6 are here and everywhere else where you work so many days and
7 then you're off?

8 A. That's correct. 24 hours on duty, 48 hours off.

9 Q. And the times when you were not there, your wife was
10 a housewife who took care of your children, right?

11 A. That's correct.

12 Q. She did not work outside the home?

13 A. At that time, no, ma'am.

14 Q. Did you ever feel that it was necessary to do any
15 disciplining because your wife was just unable to continue?

16 A. I did -- I tried to do all of the disciplining when
17 I was at home, because there were times that I would not be
18 there she would have to do the disciplining.

19 Q. And you said 10 or 12 times a day for Donnie?

20 A. It was not unusual.

21 Q. How long was he on Ritalin, Mr. Tolar?

22 A. I know at least two years.

23 Q. Okay. Did it help him at all? Or did it make him
24 worse?

25 A. I couldn't see any change, positive or negative.

1 Q. Actually, Mr. Tolar, we've tried to find the records
2 for the counseling that y'all went to. It was in Canton,
3 wasn't it?

4 A. Yes, ma'am.

5 Q. They're telling us there are no such records. Where
6 exactly is that place?

7 A. It was on -- I believe it's Highway 198. That's
8 where the building was at that time, but I know it's not --
9 they are no longer in that building, but it was Texas MHMR.

10 Q. Do you recall who the counselor was?

11 A. No, ma'am. There were at least three counselors.

12 Q. And can you think of any reason why they wouldn't
13 still have those records?

14 A. No, ma'am, I cannot.

15 Q. Now, this would have been in the 19 -- early 1980's;
16 is that right?

17 A. Yes, ma'am, that would be about '85 or '86.

18 Q. How sophisticated do you think the -- these agencies
19 were at that time in your town?

20 MR. DAVIS: I'm going to object to that.

21 THE COURT: Can you answer that of your own
22 personal knowledge, or would it just be a --

23 THE WITNESS: It would just be just a guess.

24 THE COURT: Objection sustained.

25 Q. (By Ms. Little) The children's shelter records are

1 in evidence, at least what I was able to get, and some of
2 what Mr. Davis got. When the children were brought back, did
3 Donnie break out all the windows in your house?

4 A. No, ma'am.

5 Q. Did he break out any windows in your house?

6 A. I think he broke out one or two. One -- but now one
7 of those I think was an accident. One was in anger.

8 Q. Okay. And then did they run a couple of houses down
9 and hide under the house and the police had to come get them?

10 A. I don't have any recollection of that.

11 Q. What is the actual pivotal event that caused you to
12 take the children back, if you can remember?

13 A. Donnie threatened to assault me with a handsaw.

14 Q. Okay. I didn't see that anywhere in those records.
15 Have you had an opportunity to look at those records to help
16 you remember what went on at that time?

17 A. No, ma'am, I have not looked at those records.

18 Q. There was a preacher named Pesnell I believe?

19 A. That's correct.

20 Q. He was involved in this; is that true?

21 A. Yes, ma'am.

22 Q. And nobody -- nobody at that time complained that
23 y'all had abused those kids?

24 A. No, ma'am.

25 Q. Or that -- except for Donnie, that the kids were a

1 problem?

2 A. That's correct.

3 Q. And there was never any kind of -- that you know of,
4 I guess, follow-up with any kind of Child Protective Services
5 or anybody that would be looking further for the interest of
6 the children after you took them back?

7 A. Not that I know of.

8 Q. In fact, the Van Zandt County Children's Center is
9 just someone's former home, isn't it? And it's a place where
10 they -- a temporary placement for children. They may stay
11 awhile, but it's not a foster home and it's not a -- an
12 orphanage like a huge Buckner's orphanage type place --

13 A. That's correct.

14 Q. Would that be fair to say?

15 A. Yes, ma'am.

16 Q. So as far as you know, nothing was done -- like what
17 we have now with all this involvement where lawyers get
18 appointed to represent children and all these kinds of
19 things, there was none of that, was there?

20 A. Not to my knowledge, no, ma'am.

21 MS. LITTLE: That's all I have. Thank you.

22 MR. DAVIS: Nothing further.

23 THE COURT: Thank you, Mr. Tolar. May he be
24 excused?

25 MR. DAVIS: No objection.

1 MS. LITTLE: No objection.

2 THE COURT: You may be excused to stay in the
3 courtroom or be excused as you wish.

4 20-minute break.

5 THE BAILIFF: All rise.

6 (Jury excused from courtroom.)

7 THE COURT: The jury is leaving the courtroom
8 at this time.

9 May I see one of the attorneys for either side for
10 scheduling purposes.

11 Visitors may be seated or excused as you wish.

12 (Recess of proceedings.)

13 THE BAILIFF: All rise.

14 THE COURT: Let the record reflect the jury is
15 returning to the courtroom at this time.

16 (Jury returned to courtroom.)

17 THE COURT: The jury may be seated.

18 Mr. Murphy, counsel, visitors, you may be seated.

19 The State may continue.

20 MR. DAVIS: The State will call Nancy Sanders,
21 and she has not been sworn at this time.

22 (Witness brought forward.)

23 THE COURT: Thank you, Ms. Sanders. You may
24 be seated if you please.

25

1 NANCY SANDERS

2 was called as a witness by the State and, after having been
3 first duly sworn, testified as follows:

4 Direct Examination

5 By Mr. Davis:

6 Q. Will you please tell us your full name?

7 A. Nancy Phelps Sanders.

8 Q. Ms. Sanders, how are you employed?

9 A. I'm a nurse for Dallas County in the Dallas County
10 Jail.

11 Q. Okay. How long have you been a nurse for Dallas
12 County?

13 A. 22 years.

14 Q. And there are several jails here in Dallas County.
15 Which jail are you assigned to?

16 A. The George Allen facility.

17 Q. And is that located over at 600 Commerce?

18 A. Yes.

19 Q. That actually be the white courthouse where these
20 courts used to be located at one time, right?

21 A. Yes, sir.

22 Q. What are your duties and responsibilities at this
23 time?

24 A. I'm the nursing supervisor for that facility. I
25 oversee all of the day-to-day running of the jail. I see

1 inmates. I take care of staffing problems, and I also deal
2 with the Sheriff's Department as needed.

3 Q. Just briefly, would you tell us a little bit about
4 your training and experience?

5 A. I graduated from nursing school in 1971. I am
6 licensed to practice vocational nursing in the State of
7 Texas. I went to work for Dallas County in June of 1979.

8 Q. Ms. Sanders, I want to direct your attention back to
9 April the 6th of the year 2001. At that time were you also
10 working at the George Allen jail?

11 A. Yes, sir.

12 Q. In that jail would it be fair to say that inmates
13 are housed on floors 8 through 12 over at the white
14 courthouse?

15 A. Yes, sir.

16 Q. And do you have an infirmary over there?

17 A. We have a female infirmary, and we have an area that
18 they call the infirmary that is where we see male inmates
19 that are ill. It's where our nurses station is located.

20 Q. And where is the male infirmary located over there?

21 A. It's on the 8th floor.

22 Q. Now, sometime the morning of April the 6th, 2001,
23 did you see the defendant, Jedidiah Isaac Murphy, over there
24 at the infirmary on the 8th floor?

25 A. Saw him at the nurses station, yes, sir.

1 Q. Now, had he been transferred over from the Lew
2 Sterrett jail sometime that morning?

3 A. Yes.

4 Q. Okay. He was not regularly housed over there at
5 George Allen, was he?

6 A. No, sir.

7 Q. At about 9:00 a.m. that morning, did you receive a
8 call that an inmate was complaining about his health on the
9 7th floor over at George Allen?

10 A. Yes.

11 Q. Now, the 7th floor over there, that's also part of
12 the jail, isn't it?

13 A. Yes, sir.

14 Q. Does it still contain intake over there? I know at
15 one time it used to.

16 A. No, sir, it houses holdover facilities for people
17 that are being transferred from our jail to Sterrett for
18 court. It also houses inmates that are coming to George
19 Allen for court. It also houses inmates who are in holding
20 for parole hearings and that type of thing. Also holds --
21 houses the jail administration offices for that facility.

22 Q. Now, on the 7th floor you just told us there were
23 holdover cells, correct, for the inmates?

24 A. Yes.

25 Q. Are there also rooms for parole hearings?

1 A. Yes.

2 Q. Are there also rooms provided over there for defense
3 investigators to talk with inmates?

4 A. Yes.

5 Q. Did you in fact go down there to the 7th floor?

6 A. I did at one point in time, yes.

7 Q. Okay. When you were told that an inmate was having
8 problems, were you directed to the holdover cells down there?

9 A. The -- at the early morning call that I got, no,
10 sir, I talked to the officers and asked them to bring the
11 inmate to the 8th floor.

12 Q. Okay.

13 A. And then later I went down.

14 Q. Okay. Was that inmate brought up there to you?

15 A. Yes, sir.

16 Q. And was that the defendant in this case, Jedidiah
17 Isaac Murphy?

18 A. Yes, sir.

19 Q. And at that time was Mr. Murphy making some
20 complaints to you?

21 A. Yes.

22 Q. What complaints was he making at that time?

23 A. At that time he stated that he had not urinated in
24 several days, three or four days, that he had been to
25 Parkland previously and he needed to be -- to go back.

1 Q. So he was asking to be taken out to Parkland
2 Hospital for treatment?

3 A. Yes.

4 Q. What did you do in response to his complaints? Did
5 you talk with somebody?

6 A. I talked to the nurses at Lew Sterrett.

7 Q. Who would be familiar with his medical care?

8 A. Yes, and they had his medical records.

9 Q. Uh-huh. And did you learn whether or not he had
10 tried to go out there or made an attempt to try to get out to
11 Parkland in the past?

12 A. Yes, I was told that he had not been to Parkland as
13 he was telling me and that he had tried that in the past and
14 that there was nothing wrong with him.

15 Q. Okay. So did you notify the defendant of what you
16 had been told?

17 A. Yes, I did. I told him that when he finished his
18 business at the George Allen Building, that I would notify or
19 talk to the nurses. I would talk to them again, and I would
20 make a notation on his down and out that he was to be taken
21 directly to the nurse at Lew Sterrett when he returned.

22 Q. Did he ever tell you at that time that he needed to
23 go to the bathroom, that he didn't want to go in front of
24 other inmates in his --

25 A. No.

1 Q. -- holdover cell?

2 A. No.

3 Q. Was he in fact then transferred back to floor seven
4 to one of the holdover cells?

5 A. Yes.

6 Q. Now, at approximately 1 o'clock that afternoon, did
7 you receive another call concerning an inmate having health
8 problems on the 7th floor in a holdover cell?

9 A. Yes, sir.

10 Q. And what was the nature of that call at 1 o'clock?

11 A. I was told that an inmate was saying that he was ill
12 and had requested an ambulance be called and that he be taken
13 to Parkland.

14 Q. Did you go down to the 7th floor that time?

15 A. Yes, sir, I went down at that time.

16 Q. Did you go to the holdover cell?

17 A. Yes, sir.

18 Q. When you looked in the holdover cell, approximately
19 how many inmates were in there?

20 A. Oh, there were probably 10 -- 5 to 10, if not more.
21 And they were stating that the man was on the floor and he
22 was unconscious.

23 Q. This man who was on the floor, did you recognize
24 him?

25 A. Yes, sir.

1 Q. And who was he?

2 A. It was Mr. Murphy.

3 Q. Was he in fact laying on the floor?

4 A. Yes, he was on the floor.

5 Q. What did you decide to do when you saw him on the
6 floor?

7 A. Well, for security reasons I can't go into the
8 holdover area without an officer, so I asked that they bring
9 an officer so that I could get in -- have access to him. At
10 that time I noticed that he would lift his head up and look
11 around and then put his head back down.

12 Q. So -- so I take it then you continued to observe him
13 while --

14 A. Yes, while --

15 Q. -- he was on the floor?

16 A. Yes, while they went and got the officers.

17 Q. And did I understand you to say that as you watched
18 him, that the defendant down here actually raised his head
19 and started looking around; is that right?

20 A. Yes, sir. Yes.

21 Q. Do you remember how many times he did that while you
22 were watching him?

23 A. Oh, probably at least two, maybe three.

24 Q. Well, did that -- as a result of seeing that, did
25 you form some opinion about whether this man was actually

1 unconscious or not?

2 A. Yes, I determined that he was not.

3 Q. Did you finally get access to the holdover cell?

4 A. Yes.

5 Q. And when you came inside, did you say something to
6 the defendant?

7 A. I didn't go into the holdover. I went to the door
8 and told him he needed to get up off the floor and come out
9 so he could be -- so I could examine him or evaluate him.

10 Q. And can you tell the member of the jury, what was
11 his response when you told him to get up off the floor?

12 A. First he started cursing, and then he got up.

13 Q. Do you remember what he said?

14 A. Something like, oh, shit, or something to that
15 effect. Anyway he got up, and he walked out.

16 Q. So he didn't have any difficulty getting up when you
17 asked him or told him he needed to get up?

18 A. No, sir.

19 Q. Did he seem to be upset?

20 A. Yes, he was very upset and angry.

21 Q. When he came out, did you still take his vital signs
22 to check his health condition?

23 A. I took his vital signs, and I talked to him and
24 explained to him that I couldn't -- there was nothing that I
25 could do at that time except let him finish his business that

1 he had there and send him back to Lew Sterrett where they
2 could access his medical records and he could see the doctor
3 or whoever was there.

4 Q. Did he appear to understand what you were saying to
5 him?

6 A. Yes, sir.

7 Q. How were his vital signs?

8 A. They were within normal limits if I remember
9 correctly.

10 Q. Was there a time when he was actually taken into a
11 room to talk with an investigator by the name of Bill Parker?

12 A. Yes, sir.

13 Q. And did he actually go in that room?

14 A. Yes, he did.

15 Q. Do you remember how long he stayed in that room?

16 A. It wasn't very long. I was talking to the
17 Lieutenant, and he was there only probably a couple of
18 minutes.

19 Q. Did he come out then?

20 A. Yes, he did.

21 Q. What was his mood or his condition when he came out?

22 A. He told us that he wanted to be taken to Parkland,
23 and he was told that he was not going to Parkland at that
24 time and that he was going to be placed in a holdover and
25 taken probably back to Lew Sterrett.

1 Q. How did the defendant react when he was told that he
2 was going to have to go back to a holdover and that he
3 wouldn't get his wish to go to Parkland Hospital?

4 A. He became very combative and started to fight the
5 officers.

6 Q. Do you remember what, if anything, he did to the
7 Lieutenant who was present?

8 A. He kicked the Lieutenant.

9 Q. And when you say that he began fighting, were there
10 other deputies there?

11 A. There were two other deputies, and then also the
12 investigator that he was there to talk with.

13 Q. If you could, as best you can, just describe what
14 happened after the defendant kicked the Lieutenant, what --
15 what sort of confrontation came about?

16 A. The deputies and the investigator and the Lieutenant
17 wrestled with him, got him to the floor, got him handcuffed.
18 Then they got him up and put him in the holdover area.

19 Q. So they had to actually use physical force to
20 restrain him?

21 A. Yes.

22 Q. And as I understand it, it was the -- it was the
23 Lieutenant, the deputies, and actually the investigator
24 himself, Bill Parker, helped subdue the defendant, right?

25 A. Yes.

1 Q. He was then taken back to the holdover?

2 A. Yes.

3 Q. At some point did Bill Parker leave?

4 A. Yes. While I was on the 7th floor right after they
5 had put the inmate back in the holdover, the investigator
6 left.

7 Q. Now, was the defendant in a position there in the
8 holdover cell to actually see Mr. Parker leave?

9 A. Yes, sir. They had put him in what they call the
10 electric holdover which -- the way that it's set up, most of
11 the men are on one side of the control center and the females
12 are on other side but they have a small isolated holdover.
13 And he was placed in that holdover and you can see from that
14 holdover the control center and the elevator area that
15 goes -- leaves out of the building.

16 Q. Did the defendant's attitude change after Mr. Parker
17 left?

18 A. Yes, sir. I was told that he was then asking --

19 MS. LITTLE: I object to what she was told.

20 THE COURT: Sustained.

21 Q. (By Mr. Davis) When did you next have contact with
22 the defendant?

23 A. He had been transferred to our facility after the
24 incident and they had placed him in a single cell on the 8th
25 floor and the officers came and reported to me --

1 MS. LITTLE: I'll object to what the officers
2 told her.

3 THE COURT: Sustained.

4 Q. (By Mr. Davis) Well, were you directed to the
5 holdover cell where Jedidiah Murphy was?

6 A. Yes.

7 Q. Was it your understanding that he was having some
8 sort of health problem there?

9 A. Yes.

10 Q. Okay. And when you got there, just tell the members
11 of the jury what you observed the defendant doing there on
12 the 8th floor.

13 A. He was sitting in the floor of his cell organizing
14 his commissary and his property. And he -- I asked him if he
15 was having any problems, and he told me no, that at that time
16 he was fine. I asked him if he had made any comments about
17 harming himself or anything of that nature. And he told me
18 that he might have, but that he was concerned that he wasn't
19 going to get his property. But that since he had all of his
20 property, he would be fine.

21 Q. Well, this is after Bill Parker has left, right?

22 A. Yes.

23 Q. He says he's not having any problems, right?

24 A. That's correct.

25 Q. Did he specifically -- did he ever talk about

1 problems urinating then?

2 A. No.

3 Q. Was he asking to go to Parkland Hospital?

4 A. No.

5 Q. How long did you stay with the defendant at that
6 time?

7 A. I was probably there 3 to 5 minutes.

8 Q. Did you have to give him any medical treatment or
9 care at that time?

10 A. No, we just talked.

11 Q. Now, later did you again have contact with the
12 defendant while he was in a holdover cell or a single cell on
13 the 8th floor that day?

14 A. Yes, sir. Later that night I went back and saw him
15 again.

16 Q. Okay. And just -- if you could, just describe the
17 cell that he was being held in at that time.

18 A. It's a single cell. It holds one person. It has a
19 bunk. It has a table area. It has a shower. It's
20 directly -- I mean, there's a line of approximately six
21 cells in that area. They're all single cells. They are
22 adjacent to what we call a medical tank which in this
23 particular case houses geriatric inmates or people that are
24 over 60 years old.

25 Q. So he was in an area for medical treatment, medical

1 tank; is that right?

2 A. Yes.

3 Q. Now, Lew Sterrett has medical tanks, too, don't
4 they?

5 A. Yes.

6 Q. Are they different than the medical tanks over there
7 at George Allen? For instance, do they have more creature
8 comforts available to them over there at the medical tanks in
9 Lew Sterrett?

10 A. The single cells do because over there they're
11 actually multiple men tanks that are racked off -- what they
12 call racked off. So that only one person comes out at a
13 time. They can see the television, and they have more
14 contact with other inmates. They can talk to each other.
15 They have windows. It's a little bit brighter. They can see
16 the hallway because it's a glass enclose, where at George
17 Allen it's on older jail. There's more steel and concrete.

18 Q. Do they have windows over there at George Allen?

19 A. No.

20 Q. They do at Lew Sterrett, though, right?

21 A. Right.

22 Q. At Lew Sterrett are the inmates allowed out of their
23 cell during the day?

24 A. One hour a day.

25 Q. And do they have access to a day room?

1 A. Yes.

2 Q. How about at George Allen?

3 A. No, they stay in their cell 24 hours a day.

4 Q. How about access to a television? Do inmates over
5 at Lew Sterrett have that?

6 A. In the central day room they do.

7 Q. How about at George Allen?

8 A. No. There is no television for single cell area.

9 Q. If you could, could you describe the defendant's
10 condition when you later saw him then that night?

11 A. He was agitated. He appeared angry. He stated that
12 he was going to harm himself, that he needed to be moved back
13 to Lew Sterrett, that he would go on suicide precautions, and
14 that he would prefer to be on suicide precautions than stay
15 at George Allen any longer. And he continued to tell me that
16 I had to have him moved. I needed to call the doctor and get
17 him transferred, that he was paranoid and delusional and
18 could not stay in that facility.

19 Q. So he wanted to go back to Lew Sterrett, right?

20 A. Yes.

21 Q. He said he would go on suicide watch if that was
22 necessary, just to get back over to Lew Sterrett?

23 A. Yes.

24 Q. Now, when he told you that he was paranoid and
25 delusional, I mean in your 22 years up there in the Dallas

1 County Jail, have you had occasion to deal with people who
2 are actually paranoid and delusional?

3 A. Yes, sir.

4 Q. Were his actions and statements consistent with a
5 person who was actually paranoid or delusional?

6 A. No.

7 Q. Why not?

8 A. Number one, he wasn't saying that anyone was trying
9 to hurt him, no one was trying to harm him. He was alert,
10 oriented. He knew what was going on. Most people that are
11 delusional are not in touch with reality. They seem to think
12 that things are going on or they have more power than they do
13 or people that are paranoid think someone is going to hurt
14 them, whether it be an officer, whether it be other inmates.
15 They show some signs of fear. His was just agitation and
16 said he didn't like it there and he wanted to be transferred.

17 Q. By the way, when you talked with him later that
18 night, was he making any complaints about problems urinating?

19 A. No.

20 Q. Did he demand to go to Parkland Hospital?

21 A. No.

22 Q. His only demand was to go back to Lew Sterrett?

23 A. Yes.

24 Q. Did he eventually get his wish to go back to Lew
25 Sterrett?

1 A. Yes.

2 MR. DAVIS: Thank you, Ms. Sanders.

3 I pass the witness.

4 Cross-Examination

5 By Ms. Little:

6 Q. Is it Ms. Sanders?

7 A. Yes.

8 Q. Ms. Sanders, you've worked over there a long time so
9 you've seen just about everything, haven't you?

10 A. Yes, ma'am.

11 Q. Now, a single cell is not the same thing as the
12 suicide tank, is it?

13 A. It's almost -- it's -- they're both considered
14 single cell. The thing with the suicide tank, it's an 8-man
15 tank with 8 individual cells. And those people are racked
16 off at all times. They cannot come in, and they are by
17 themselves.

18 Q. Okay. And when people have health problems or
19 something they need, they send y'all what's called a kite,
20 don't they?

21 A. Yes.

22 Q. Tell the jury what that is.

23 A. The kite is simply a form that they send out and
24 they make a notation of whether they need to see the doctor,
25 the dentist, the nurse, and what their basic complaint is or

1 what they're trying to get, whether it be medication,
2 somebody to talk to. Basically it just tells us what they
3 want.

4 Q. Okay. And you get a lot of people that want things
5 that are just -- you get sort of case hardened because people
6 in jail complain a lot, don't they? And it's not always
7 legitimate?

8 A. That's true.

9 Q. Now, when he was complaining about the urinary
10 problems, he was in a cell with you say 5 to 10, possibly
11 more people, right?

12 A. The first time I saw him, no, he was in a room with
13 just me and the officer.

14 Q. He was complaining then about urinary problems?

15 A. He said that he had not urinated in about 3 or 4
16 days.

17 Q. Then he was placed -- because you went down to see
18 him and when you went back. He was in a cell with a number
19 of other people?

20 A. Uh-huh.

21 Q. What is BAC?

22 A. Behavioral Activity Control.

23 Q. What is it that y'all used to call that? Bare ass
24 on concrete, wasn't it?

25 A. Yes.

1 Q. Bare ass on concrete?

2 A. That's one of the slang terms, yes.

3 Q. What does that mean?

4 A. It means that they have absolutely no possessions.

5 Q. And no clothes?

6 A. That's what I mean.

7 Q. And they're in a single cell?

8 A. Yes.

9 Q. And that's where you go when you're on suicide
10 watch?

11 A. Not at all times. They don't use behavioral
12 activity control now except in extreme situations. They have
13 to give them a paper drape at least, and in most cases they
14 are allowed to keep their mattress and their underwear.

15 Q. That's not always true, is it?

16 A. It depends upon how they're saying they're going to
17 harm themselves.

18 Q. It's not always true though, is it?

19 A. No.

20 Q. Have you ever heard of a somatoform disorder?

21 A. No.

22 Q. Do you know what that is?

23 A. No.

24 Q. And when you went down there and saw that he was
25 moving his head around and told him to get up and come out,

1 he did what you told him, didn't he?

2 A. Yes.

3 Q. Now, when he is in Crowley, are you aware that he's
4 in the psych ward there?

5 A. Yes.

6 Q. And that he takes medication everyday?

7 A. Yes.

8 Q. Numerous medications?

9 A. I don't know exactly what he takes, but I do know
10 that he was on medication.

11 MS. LITTLE: Thank you. That's all I have.

12 MR. DAVIS: No further questions.

13 THE COURT: Thank you. You may step down.
14 You are excused.

15 The State may continue.

16 MS. MILLER: Call Shirley Bard to the stand.

17 THE COURT: This witness has been previously
18 sworn in, is under oath.

19 MS. MILLER: May I proceed?

20 THE COURT: You may.

21 SHIRLEY BARD

22 was called as a witness by the State and, after having been
23 first duly sworn, testified as follows:

24 Direct Examination

25 By Ms. Miller:

1 Q. Would you please state your name and reintroduce
2 yourself to the jury?

3 A. I'm Shirley Bard from Wills Point.

4 Q. Ms. Bard, you are the same Shirley Bard who
5 testified during the guilt/innocence phase of this trial; is
6 that correct?

7 A. That's correct.

8 Q. Okay. Just to remind the jury, you know the
9 defendant, Jedidiah Isaac Murphy, but you knew him under a
10 different name?

11 A. Jim Kines.

12 Q. And you knew him because you worked with him
13 welding; is that correct?

14 A. That's correct.

15 Q. Now, Ms. Bard, you said, I believe, during
16 guilt/innocence that you had helped basically train the
17 defendant on TIG welding?

18 A. Yes.

19 Q. Okay. Now, during the course of working with the
20 defendant -- so this was back in the early part of 2000; is
21 that correct?

22 A. I'm not sure.

23 Q. Okay.

24 A. No -- yeah, it was, because I went to work for
25 someplace else January the 10th of 2001.

1 Q. Okay. Now --

2 A. Excuse me.

3 Q. Did you, while you were working with the defendant,
4 have some problems with him?

5 A. Yes, I did.

6 Q. Okay. Can you explain to the jury when you're doing
7 the TIG welding and what use you have for pallets?

8 A. Pallets is wood structure that we stack our
9 merchandise on after we get through welding it so it can be
10 transferred to another part of the building.

11 Q. Okay. And on a particular day -- well, do you-all
12 have to go get your own pallets?

13 A. Yes, we have to go outside and they are quite heavy
14 in carrying them in.

15 Q. And on this particular day did you go out and get a
16 pallet?

17 A. Yes, I did.

18 Q. And after you had gotten a pallet and -- and put it
19 in your work station, did someone come take it?

20 A. Yes, while I had my back turned working with some
21 stuff behind me.

22 Q. Who took it?

23 A. Jim.

24 Q. The defendant?

25 A. Yes.

1 Q. Did you talk to the defendant about him taking your
2 pallet?

3 A. Well, the pallet had blood on it from -- I guess
4 where they were making it and I went over and looked around,
5 because everyone's pretty bad about doing something like
6 this, especially to me, because I was a woman working there.
7 And I went over and saw the pallet. Jim had his stuff on
8 it. And I said, Jim, did you get my pallet. He said, yeah,
9 there's plenty of pallets out there. I said, you go get --

10 Q. Now, Shirley, I'm going to stop you there, and I
11 know you don't like using the words, but it's important for
12 the jury to understand what -- use the exact words that the
13 defendant used.

14 A. He said, "yeah, there's plenty of fucking pallets
15 out there. Go get your own."

16 I said, "that is mine. You got it out of my
17 station."

18 Q. How did the defendant react to that?

19 A. He reacted for me to go screw myself.

20 Q. So what, if anything --

21 A. I went and got another pallet.

22 Q. Okay. And was that the -- did you think that was
23 the end of the situation?

24 A. Yes, I did.

25 Q. Was it the end of the situation, Shirley?

1 A. No, it wasn't.

2 Q. Tell the jury what happened then.

3 A. The next morning he caught me real early -- well, it
4 actually started when I went to leave that evening.

5 Q. Okay.

6 A. And he was at least two car lengths back. I was
7 parked at the very front, and I pulled out in front of him,
8 but he was two car lengths back. I had plenty of time,
9 plenty of room.

10 Q. So what did the defendant do at that point?

11 A. He didn't do anything at that point.

12 Q. Okay.

13 A. It was the next morning.

14 Q. So when you got to work the next morning, was the
15 defendant already there?

16 A. No.

17 Q. Okay. Did he come up after you had already gotten
18 to work?

19 A. Yes.

20 Q. And tell the jury what happened then, Shirley.

21 A. He come over into my station and he told me he was
22 going to knock my fucking head off if I ever cut him off
23 again.

24 And I said, "Jim, I didn't cut you off."

25 And he said, "you mouth back to me and I'll knock

1 your fucking head off." And I had to call the foreman from
2 the back to get him out of my station.

3 Q. Now, was he drunk at that time, Shirley?

4 A. Not to my knowledge.

5 Q. Did he appear to be high or on any type of drugs at
6 that point?

7 A. Not to my knowledge.

8 Q. As a matter of fact --

9 A. But a lot of people did do drugs there at work, but
10 I don't think he hung out with them.

11 Q. Well, as a matter of fact, didn't the defendant take
12 a lot of pride and brag about not using alcohol or drugs?

13 A. Yes, he did.

14 Q. And so when he made these comments to you, Shirley,
15 tell -- tell the jury what the defendant's demeanor was, how
16 he was acting when he told you that he was going to knock
17 your fucking head off?

18 A. He acted like he was going to knock my fucking head
19 off.

20 Q. Okay. Was he -- was his voice raised or was he --

21 A. Yes, he was loud. He was mad.

22 Q. Okay. You said that you had to go get --

23 A. No, I called Jerry. He was standing at the back,
24 and I called him to get up there and get him out of my
25 station, because I couldn't get to my hammer. And that was

1 the only protection I would have had.

2 Q. So did the foreman come and get the defendant out of
3 your station?

4 A. Yes, the foreman came up and told him, said, "shoo,
5 Jim, go on back over to your station."

6 Q. And how --

7 A. And that's because the foreman was half afraid of
8 him.

9 Q. How did the defendant react?

10 A. He just turned and walked off.

11 Q. Okay. Now, was that the end of the situation,
12 Shirley?

13 A. No, I took it to the owner of the company.

14 Q. Okay.

15 A. And I told him what happened, and he said, well --

16 MS. LITTLE: I object to what the owner of the
17 company said.

18 THE COURT: Sustained unless it's in the
19 presence of the defendant.

20 Q. (By Ms. Miller) Without going into what the owner
21 said, did -- did you have another confrontation with the
22 defendant?

23 A. Yes, I did.

24 Q. Okay. And was that the same day or the next day?
25 Or a couple of days later?

1 A. It was probably a day or two later. It might have
2 been the same day. I don't know. I've slept since then and
3 I have another job and I don't remember this part.

4 Q. Okay, Shirley. Tell -- well, tell the jury about
5 the confrontation again -- the next confrontation?

6 A. Well, Jim said if I started any more problems for
7 him, he was going to kill me.

8 Q. Did you believe him?

9 A. Not at the time. I just thought he was just
10 mouthing off, and he --

11 Q. Did --

12 A. Well, he talked about guns all the time and what
13 access he had to them and all the things that he did and
14 everything and --

15 Q. Okay. Let me stop you right there, Shirley. You
16 said that he talked about guns and the access he had to them
17 and what he did. Tell the jury what the defendant told you
18 about the access he had to guns and what type of guns.

19 A. All kinds of guns. He told me he had an AK. I
20 don't know. I didn't see it, but that's just what he said.
21 But it was enough to put the fire -- fear in me.

22 Q. Did he tell you that he basically had access to
23 anything he wanted?

24 A. Yes.

25 Q. Did he -- you said that he also talked about other

1 things that he had done. What types of things did the
2 defendant brag to you about, Shirley?

3 A. With a certain guy they would go out and shoot
4 things and at people and whatever.

5 Q. So the defendant -- this certain guy, was that
6 Chelsea Willis, his girlfriend or wife's grandfather that he
7 was saying?

8 A. Yes.

9 Q. And so he told you that they -- that he and
10 Chelsea's grandfather -- was that Logan?

11 A. Yes.

12 Q. Okay. Talked about shooting at people?

13 A. That's what Jim told.

14 Q. Did you believe him?

15 A. I didn't have any reason not to. I didn't have any
16 reason to. I was -- it was just let him go past me and
17 forget it.

18 Q. But he did brag to you about doing this with his
19 wife's grandfather?

20 A. Yes. He told all kinds of tales.

21 Q. Okay. Do you remember some of the other tales he
22 told you, Shirley?

23 A. Yeah, some Mexicans was camping on Logan's place and
24 they went down and took potshots at them and all kinds of
25 stuff like that.

1 Q. Okay. Now, Shirley, did -- did the defendant make
2 some more threats to you after he told you not to cut him
3 off?

4 A. Yeah.

5 Q. Okay. Tell the jury about it.

6 A. He threatened to shoot me.

7 Q. Okay.

8 A. And he said --

9 Q. What --

10 A. When he got fired, his last threat for me, of
11 shooting me.

12 Q. Okay. Let's back up, Shirley. Okay. The morning
13 after he -- you pulled in front of him, you said there were
14 at least two car lengths between you?

15 A. Uh-huh. Uh-huh.

16 Q. He comes in and says that you better not cut him
17 off?

18 A. Yeah, that's when he was going to knock my head off.

19 Q. Okay. Now, when was the next time that he
20 threatened you after that?

21 A. Two or three days later when there was some more
22 problems that we had there.

23 Q. Tell -- Shirley, tell the jury what problems you
24 had.

25 A. Well, we just had problems working together. I

1 was -- I didn't have the title of lead, but I was teaching
2 people and the foreman would tell me what needed to be done
3 and everything. And Jim was getting all the guys over there
4 in the corner and talking to them. He has that charisma with
5 the guys, you know. They all talk guy stuff. I stayed over
6 at my station away from all of them. And then at noon I
7 would -- I was working two jobs and at noon I'd lay down to
8 take a nap. I only had 30 minutes. During that 30 minutes,
9 Jim would bang on metal. He would drop things on the floor.
10 He would pick up pallets and slam them on the floor. And I
11 just laid there. I was resting. I couldn't sleep, so that
12 was fine, also.

13 Q. Did you tell me it was just out of pure meanness
14 that you felt he was doing this?

15 A. That's what I felt, yes, and then I got to where I
16 went somewhere place else and laid down after about two or
17 three days of it.

18 Q. Did you tell me that you finally got yourself some
19 earplugs, too?

20 A. Yeah.

21 Q. So then what happened, Shirley?

22 A. Then -- like I say, we were still having quite a bit
23 of problems and he was still wising off and smarting off and
24 he came over to the microwave one morning. I was, you
25 know -- he didn't come over. I didn't notice him standing

1 there, and I went to the microwave. And I went to put my
2 stuff in the microwave. There were two of them there. And
3 he said, "I guess I owe you an apology."

4 I said, "I think you certainly do."

5 Q. So how did he respond when you told him you he owed
6 you an apology?

7 A. He didn't like it very much. I walked off and went
8 to my station. Then he come to my station.

9 Q. And what did he say, Shirley?

10 A. He told me that he had access to anything he wanted
11 and I should know it by now and he would blow me away.

12 Q. Now, is that what he said, Shirley?

13 A. He said he could kill me and I wouldn't know it was
14 coming.

15 Q. Did you believe him at that point?

16 A. I got scared, yes.

17 Q. So what did you do?

18 A. I went to the boss.

19 Q. And --

20 A. I went to the foreman, and I told him I quit.

21 Q. So because of this defendant, you quit your job
22 because of the threats he was making?

23 A. I went to quit my job. I went -- I got part of my
24 stuff, I went to my truck, I went to the foreman, I told him,
25 I went to my truck, and the foreman caught me at my truck.

1 Q. Okay. And were you told to calm down and come back
2 in a little bit?

3 A. I was told by one of the owners because the foreman
4 caught the owner as he was pulling up and called him over
5 there and I told him what happened. And they told me to go
6 have lunch. It was on them. And come back in 30, 35
7 minutes.

8 Q. Did you, Shirley?

9 A. Yeah, I came back in about 35 minutes.

10 Q. And did you come in contact with the defendant after
11 you came back?

12 A. Yes. He was getting in his car when I pulled up and
13 parked.

14 Q. Did he stop and have words with you?

15 A. Yes, he did.

16 Q. And tell the jury what he said, Shirley.

17 A. He told me that I was nothing, I was a piece of
18 shit, and that I would never see it coming, I could be at
19 work, I could be at home, I could be driving down the road,
20 and he would blow me away.

21 Q. And was there something about the defendant's
22 demeanor that particularly frightened you, Shirley?

23 A. I felt like he meant it. I asked my son about him,
24 and my son said if he killed you, mom, he better --

25 MR. BYCK: I object --

1 THE COURT: Sustained.

2 MR. BYCK: -- to what her son said.

3 Q. (By Ms. Miller) Without going in to what your son
4 said. So the defendant told you he was basically going to
5 kill you and you wouldn't know when it was coming?

6 A. Uh-huh.

7 Q. You have to answer yes or no.

8 A. Yes.

9 Q. Now, Shirley, how was the defendant acting when he
10 told you that he was going to kill you this time?

11 A. He was calm, cool, and collected.

12 Q. Did he appear to be under the influence of anything
13 at this time?

14 A. He didn't seem to be angry at all. He just meant
15 what he said.

16 Q. And so a couple of the other times he was angry and
17 ranting, but this time he was just cool, calm, and collected
18 when he told you that you wouldn't know when it was coming?

19 A. Uh-huh. Yes.

20 Q. Shirley, you said that you -- that that scared you,
21 and that you thought that he could and would follow through
22 with that. So what did you do at that point?

23 A. Well, I looked over my shoulder all the time. And I
24 was very careful where I went and what I did. And I also
25 asked a few people if he was capable of doing it. Some said

1 yes --

2 MR. BYCK: Objection as to what other people
3 said.

4 THE COURT: Sustained.

5 MR. BYCK: Ask the jury to disregard.

6 THE COURT: The jury will disregard the last
7 response of the witness.

8 Q. (By Ms. Miller) Shirley, you can't go into what
9 other people told you.

10 A. I'm sorry.

11 Q. But as a result of the threats the defendant made
12 against you, were you scared enough that you called --

13 A. Van Zandt County.

14 Q. Van Zandt County --

15 A. Sheriff's Department? Yes, I did.

16 Q. Now, you didn't know the defendant's name to be
17 Jedidiah Isaac Murphy, did you?

18 A. No, I did not.

19 Q. So when you called the police department, were you
20 checking up on the defendant under the name you knew him as?

21 A. Jim Hines (sic), yes.

22 Q. Okay. And so you weren't able to find anything out
23 about him under that name?

24 A. They said they didn't have anything on a Jim Hines.

25 Q. Okay. So you were so scared that you actually

1 called the Sheriff's Department to check up on him?

2 A. That's correct.

3 Q. Did you have -- Shirley, did you have any more
4 contact with the defendant after he made the final threat?

5 A. No.

6 Q. Now, you said, Shirley, that you had been working
7 two jobs. Did the defendant know where your other job was?

8 A. Oh, yeah, him and his wife came in there all the
9 time.

10 Q. Where was that?

11 A. It was in Wills Point at a little bait shop.

12 Q. And as a matter of fact, did the defendant make
13 specific comments about your other job when he made the
14 threats?

15 A. Yes, he did.

16 Q. So when he was threatening you, he even made
17 reference to where your other job was?

18 A. Sure. He said he knew where I lived, he knew where
19 I worked, and he wouldn't have any problem.

20 Q. And how did that make you feel, Shirley?

21 A. Scared.

22 Q. Okay. Thank you, Shirley.

23 MS. MILLER: I'll pass the witness, Your
24 Honor.

25

Cross-Examination

By Ms. Little:

Q. Ms. Bard, I'm Jane Little. I've got just a few questions for you.

A. Okay.

Q. How long had you worked at R & R Designs?

A. 7, 8 years.

Q. And you've told us this at the first part of the trial, but would you tell me again what your job was?

A. Well, I was a TIG welder.

Q. Was that the same job you had all the time you were there?

A. Yes.

Q. Now, you said that you weren't officially a supervisor and you apparently were the only or one of very few women; is that correct?

A. That's correct.

Q. But you didn't have the title of supervisor?

A. That's correct.

Q. So what -- what supervisory job did you have there?

A. Well --

Q. What did you supervise?

A. I just taught people how to weld. And the foreman would come and tell me what needed to go that day and how soon it needed to go. If we had something hot, it had to go

1 right then, put my quickest people on it and get it done.

2 Q. Okay. Now, you said that -- obviously you felt a
3 little on the outside of the men that worked there; is that
4 right?

5 A. Oh, sure.

6 Q. And you said that not everybody accepted your
7 position of sort of an unofficial authority figure; is that
8 right?

9 A. There was one or two that didn't. The rest of them
10 pretty much did.

11 Q. How about Rufus and Anthony?

12 A. Rufus?

13 Q. Uh-huh.

14 A. Rufus was a MIG welder. I didn't teach him
15 anything.

16 Q. You didn't get in the middle of a confrontation he
17 had with an Anthony in there?

18 A. Yeah, I did. That was when Rufus was going to cut
19 Anthony, and I went and told the owner.

20 Q. Okay. In fact that's a place where everybody works
21 hard. It's hard manual labor, isn't it?

22 A. That's correct.

23 Q. And there's a lot of cussing and carrying on and
24 locker room kind of talk, isn't there?

25 A. Except for me. I didn't do it, and I asked them to

1 stay out of my station.

2 Q. But that's what went on. That's the nature of that
3 kind of a business?

4 A. That's correct.

5 Q. And you said that you and Jim didn't get along
6 essentially?

7 A. We did to start with. I befriended him, and I
8 helped him do anything I could, sold him a little frog that
9 was made that I had had for years for him to give to his wife
10 because she liked frogs.

11 Q. Uh-huh.

12 A. I mean, you know, I just -- I befriended him and he
13 turned on me. I didn't understand why.

14 Q. Well, let me ask you this, do you know who Logan
15 Craft is?

16 A. All I know is what he told me.

17 Q. Did you know Logan Craft is a person who's of some
18 substance in his -- in that town?

19 A. Supposed to be a retired Marine.

20 Q. Okay. Did he ever hold any office there that you
21 know of?

22 A. I don't have any idea. I didn't even -- never heard
23 of the man until Jim spoke of him.

24 Q. And you don't know how old he is or anything like
25 that?

1 A. I have no earthly, never seen the man, never met
2 him.

3 Q. But you assume that some former Marine that was an
4 elderly man that was a grandfather would be out shooting at
5 people with Jim Murphy?

6 A. I've known men to do it before.

7 Q. You have?

8 A. Yes, I have.

9 Q. Did they work at R & R Designs?

10 A. No.

11 Q. Now, whatever caused the problem, you know, however
12 it got cross-ways with y'all, you testified that you did get
13 cross-ways?

14 A. Yes, we did.

15 Q. And that time that he came to apologize to you and
16 you said, yes, you owe me an apology and walked off, that was
17 over what specifically?

18 A. That was over him telling me he was going to knock
19 my Fing head off.

20 Q. Okay. So I take it that you didn't accept that
21 apology?

22 A. Yes, I accepted it, but I did not want to have any
23 more confrontation out of him.

24 Q. So you just walked off when he said that?

25 A. That's right.

1 Q. How many sons have you got, Ms. Bard?

2 A. I have three boys.

3 Q. How old are they?

4 A. 37, 39, and 41.

5 Q. Did you ever tell Jim that you were going to have
6 your sons chop him up and spit him in the river?

7 A. No, I did not.

8 Q. Did you ever have a situation where he was in the
9 parking lot and you ran out in front of him in your car?

10 A. No. I didn't cut him off if that's what you're
11 thinking.

12 Q. Yeah, I guess that's the right word.

13 A. Yeah.

14 Q. Now, you were in a position where you were training
15 people, but not being called a supervisor, which we see that
16 down here.

17 A. Uh-huh.

18 Q. And that's not any fun, is it?

19 A. Well, no, it isn't.

20 Q. Because you have all the responsibility and none of
21 the real authority and certainly not the money?

22 A. No, the responsibility went on Jerry Thornton, not
23 me. I just had to answer to him.

24 Q. Did you -- if Bojack (phonetic) were here, do you
25 think he would say the same thing that you said about these

1 threats in the parking lot?

2 A. Bojack? Yeah, because I asked Bojack.

3 Q. When would that have been?

4 A. At the store where I worked. I asked him if he was
5 capable.

6 Q. If he was what?

7 A. If he was capable of doing that to me.

8 Q. No, I'm talking about being a witness to it. To
9 whether this ever actually happened or not, the threats in
10 the parking lot?

11 A. I don't think Bojack ever heard it unless he was
12 standing there and I didn't see him.

13 Q. Ms. Bard, when you began working at R & R Designs,
14 what was your hourly wage?

15 A. \$5 an hour.

16 Q. And you were there how many years did you tell me?

17 A. Eight years.

18 Q. And what was your wage when you left?

19 A. \$10 an hour.

20 Q. And how long had Jim worked there?

21 A. About three months or less.

22 Q. And he made 9.50 an hour, didn't he?

23 A. No. He told me he made 8.75. I don't know.

24 Q. If the records reflected that he made 9.50 from
25 Stephanie that would be correct, wouldn't it?

1 A. Yes, it would.

2 MS. LITTLE: That's all I have. Thank you.

3 Redirect Examination

4 By Ms. Miller:

5 Q. Ms. Bard, I have just a couple other questions.

6 Now, Bojack is somebody that the defendant got hired there at
7 R and R?

8 A. That's correct.

9 Q. Is that correct?

10 A. Uh-huh.

11 Q. And did the defendant ever talk to you about his
12 prior arrests, about having --

13 A. Jim's prior arrests?

14 Q. Yeah, did the defendant --

15 A. Oh, yeah.

16 Q. -- tell you about being arrested before?

17 A. Yeah, he was arrested while -- while he worked
18 there.

19 Q. And did he seem ashamed of it?

20 A. No.

21 Q. Tell the jury how -- when he was talking about his
22 prior arrests, how he seemed to view them.

23 A. He bragged about it. I mean, it was something that
24 was always someone else's fault. It wasn't his fault. He
25 didn't do what they said he did, and he didn't realize it was

1 a police officer standing there when he hit him.

2 MS. MILLER: Thank you, Ms. Bard.

3 I'll pass the witness.

4 MS. LITTLE: Nothing further.

5 THE COURT: Thank you. You may step down,
6 ma'am.

7 THE WITNESS: May I go home?

8 MR. DAVIS: May this witness be excused?

9 MS. LITTLE: No objection.

10 THE COURT: She may be excused.

11 MR. DAVIS: Your Honor, ladies and gentlemen
12 of the jury, at this time the State rests in rebuttal.

13 (State Rests in Rebuttal)

14 MS. LITTLE: Your Honor, we need to -- at this
15 time we'll offer the slides that Ms. -- Dr. Connell had that
16 went with that presentation that's already in evidence, as
17 Defense Exhibit Number 70 for all purposes.

18 (Defendant's Exhibit No. 70 offered)

19 MR. DAVIS: No objection.

20 THE COURT: Admitted.

21 (Defendant's Exhibit No. 70 admitted)

22 MS. LITTLE: And Defendant's Exhibit Number
23 70A for record purposes only.

24 (Defendant's Exhibit No. 70A offered)

25 THE COURT: Those are the matters about which

1 the objection was sustained?

2 MS. LITTLE: I'm sorry --

3 THE COURT: For record purposes?

4 MS. LITTLE: Yes.

5 THE COURT: Admitted for trial record purposes
6 only.

7 (Defendant's Exhibit No. 70A admitted)

8 MS. LITTLE: We may need to take up a matter
9 outside the jury's presence, please.

10 THE COURT: Sheriff, if you'd retire the jury.

11 THE BAILIFF: All rise.

12 (Jury excused from courtroom.)

13 THE COURT: The jury has been excused from the
14 courtroom at this time.

15 Mr. Murphy, counsel, visitors in the gallery, you
16 may be excused.

17 MS. BALIDO: May we have five minutes in the
18 holdover, Judge.

19 (Recess taken.)

20 THE COURT: Let the record reflect this
21 hearing is being conducted in open court, outside the
22 presence and hearing of the impaneled jury.

23 The defense may proceed.

24 MS. BALIDO: We call the defendant, Jedidiah
25 Isaac Murphy.

1 THE COURT: You may.

2 MS. BALIDO: He's been previously sworn.

3 THE COURT: He may testify where he finds
4 himself seated.

5 MS. BALIDO: Okay.

6 JEDIDIAH ISAAC MURPHY

7 the defendant, was called as a witness in his own behalf and,
8 after having been first duly sworn, testified as follows:

9 Direct Examination

10 By Ms. Balido:

11 Q. Mr. Murphy, I have explained to you on a number of
12 occasions now that you have a right to testify on your own
13 behalf in the punishment hearing of this case; is that
14 correct?

15 A. Yes, ma'am.

16 Q. And I've explained and we have discussed on numerous
17 occasions the pros and cons of either testifying or not
18 testifying in this case; is that true?

19 A. Yes, ma'am.

20 Q. Both on guilt/innocence and also punishment; is that
21 true?

22 A. Yes, ma'am.

23 Q. And you have decided not to testify in this case?

24 A. Yes, ma'am.

25 Q. And that is your decision and your decision alone;

1 is that correct?

2 A. Yes, ma'am.

3 MS. BALIDO: Okay. Nothing further, Judge.

4 THE COURT: Mr. Murphy, by your responses, may
5 I assume that nobody has forced or threatened or coerced you
6 from testifying?

7 THE DEFENDANT: Yes, sir. No one did that.

8 THE COURT: Do you have any questions for me
9 in that regard?

10 THE DEFENDANT: No, sir.

11 THE COURT: None whatsoever?

12 THE DEFENDANT: Not a one.

13 THE COURT: Both sides ready for the jury to
14 return?

15 MR. DAVIS: We're ready.

16 MS. LITTLE: Gilda is here. Shall she take
17 the stand?

18 THE COURT: We need the jury, first.
19 Sheriff.

20 THE BAILIFF: All rise.

21 (Jury returned to courtroom.)

22 THE COURT: Let the record reflect the jury
23 has returned to the courtroom at this time.

24 Jury may be seated.

25 Mr. Murphy, counsel, visitors in the gallery, you

1 may be seated, please.

2 Defense may continue.

3 MS. LITTLE: At this point we'll recall Dr.
4 Kessner.

5 THE COURT: Doctor, if you please.

6 GILDA KESSNER

7 was called as a witness by the Defendant and, after having
8 been first duly sworn, testified as follows:

9 Direct Examination

10 By Ms. Little:

11 Q. State your name, please, ma'am.

12 A. Gilda Kessner.

13 Q. You are the same Dr. Gilda Kessner that testified
14 earlier today; is that correct?

15 A. Yes, ma'am.

16 Q. Dr. Kessner, did I ask you this morning early to
17 review the Van Zandt jail records --

18 A. Which I did.

19 Q. -- that you testified about in this case?

20 A. Yes.

21 Q. And did do you that?

22 A. Yes, I did.

23 Q. Did you look at a form --

24 MS. LITTLE: May I approach the witness, Your
25 Honor.

1 THE COURT: You may.

2 Q. (By Ms. Little) Did you look at a form at my
3 request this morning that's from the Van Zandt County Jail
4 medical and/or and dental --

5 A. Yes, I did.

6 Q. -- portion? What's the date of that?

7 A. 10-26-95.

8 Q. And is there an indication there of some sort of
9 urination problem?

10 A. Urinary tract infection, needs assistance
11 immediately, and then problem -- complaint of -- I can't make
12 out this word, on urination.

13 Q. And that was when he was in jail in October of 1995?

14 A. Yes.

15 Q. Tell the jury what somatoform means, Dr. Kessner?

16 A. It's a category of disorders where an individual
17 will express emotional disturbance or psychological problems
18 with physical symptoms. Very often medical doctors will do a
19 workup and not be able to find anything that can be
20 discovered through traditional medical tests. There may be
21 in some cases an actual illness, however very often there are
22 complaints of pain, neurological symptoms, sexual
23 dysfunction, and other types of symptoms in that regard. And
24 urinary retention is one of the symptoms that can be found.
25 It's actually a category of disorders. So there's the

1 somatoform pain disorder, somatization disorder. And it's
2 basically the way some individuals will express their
3 psychological distress.

4 MS. LITTLE: Thank you. That's all I have.

5 MR. DAVIS: No questions.

6 THE COURT: Thank you. You may again step
7 down.

8 Defense may continue.

9 MS. LITTLE: At this time, Your Honor, ladies
10 and gentlemen, the defense will rest.

11 (Defense Rests in Rebuttal.)

12 MR. DAVIS: The State closes, Your Honor.

13 MS. LITTLE: Close.

14 (Both Sides Close in Punishment.)

15 THE COURT: Ms. King, close the testimony,
16 please.

17 (Close of testimony.)

18 THE COURT: Ms. Briscoe, ladies and gentlemen,
19 we'll stand in recess until tomorrow morning at 9:30. A copy
20 of the first draft of the charge has been prepared, submitted
21 to the attorneys. There necessarily will be some changes
22 which we'll make this afternoon. We're going to be
23 assembling tomorrow morning before you.

24 It's my understanding that the bailiffs have
25 suggested an appropriate place for all of you to park

1 tomorrow morning; am I correct? Anybody have a question
2 about that?

3 Ladies and gentlemen, I'm not, and I have absolutely
4 no way of knowing, nor do you, nor any of us, how long the
5 deliberations will last. However, out of an abundance of
6 caution for your benefit, I'm going to ask that you pack some
7 additional items for bed wear and matters such as that. We
8 have already -- not anticipating, predicting, because we do
9 not know, but obviously you don't know as well, but we've
10 already made reservations if deliberations should go into
11 Sunday. So you may want to warn your family and friends and
12 those of you that have to take care of plants and pets or
13 whatnot make additional arrangements in the possibility. Not
14 predicting it, none of us can, but it would be of great
15 benefit to you to make plans before you come down here,
16 rather than have the Sheriff go out and try to scramble up
17 some stuff and escort you to your house or apartment or
18 townhouse as the case may be. Done that in the past. It's a
19 hassle, especially to you good folks. We want to avoid that
20 for your benefit. Again, I'm not predicting it will happen.
21 We don't know. But out of an abundance of caution and based
22 on past experience, you know, better to be safe than sorry.
23 So we'll see you-all tomorrow morning, jury room, 9:30 a.m.
24 Have a good evening.

25 THE BAILIFF: All rise.

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(Jury excused from courtroom.)

THE COURT: Visitors in the gallery, you may
be excused or seated as you wish.

(Recess of proceedings.)

Reporter's Certificate

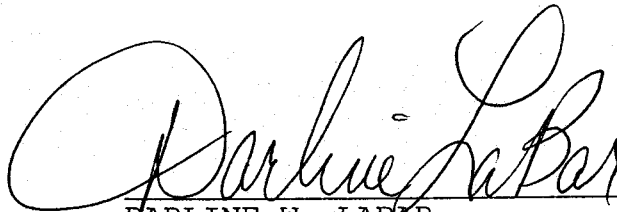
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 13th day on November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

VOLUME 60 of 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

PUNISHMENT PHASE BY THE JURY

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

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Troy C. Bennett, Jr., Clerk

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 30th day of June, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: The State have any objection to
3 the charge?

4 MR. DAVIS: No, Your Honor.

5 THE COURT: Ms. Balido, you may dictate your
6 objections into the record.

7 (Objections to Court's Charge)

8 MS. BALIDO: You're assuming I have
9 objections, Judge. And I do have a couple of objections,
10 Judge.

11 First, we would object to the paragraph -- the
12 second full paragraph on page 4 where the jury is instructed
13 that you are not to be swayed by mere sentiment, conjecture,
14 sympathy, passion, prejudice, public opinion, or public
15 feeling in answering special issues. We feel it comments on
16 the weight of the evidence on the mitigation question,
17 Special Issue Number 2. That's our first objection.

18 THE COURT: Objection is overruled. I cite
19 for authority the United States Supreme Court case of Ramos,
20 R-a-m-o-s, versus California.

21 MS. BALIDO: And additionally, Judge, prior to
22 the beginning of the punishment phase of the trial, we filed
23 a motion for jury instructions regarding evidence introduced
24 at punishment for consideration of the special issues. In
25 that motion under the Roman Numeral III we asked for a

1 instruction or an instruction saying the State has introduced
2 evidence that the defendant has committed unadjudicated
3 criminal offenses and/or bad acts. You shall only consider
4 such evidence in answering special issue -- the first special
5 issue that deals with the issue of a continuing threat to
6 society if it helps you answer that issue. You denied our
7 request to instruct the jury, so before the -- before the
8 beginning of the hearing and we'd ask you to instruct it in
9 the jury charge of the case.

10 THE COURT: Request denied.

11 MS. BALIDO: And we were making both of these
12 requests under the 5th, 6th, 8th, and 14th Amendments of the
13 United States Constitution, Article 1, Section 10, 13, 19 of
14 the Texas Constitution, the due course of law provision of
15 the Texas Constitution, the due process clause in the Equal
16 Protection Clause of the United States Constitution, and
17 Article 37.07(1) of the Texas Code of Criminal Procedure.

18 THE COURT: Anything further?

19 MS. BALIDO: Nothing further, Judge.

20 THE COURT: Sheriff, may we have Mr. Murphy,
21 please.

22 May we have the jury, please.

23 THE BAILIFF: All rise.

24 (Jury returned to the courtroom.)

25 THE COURT: Let the record reflect the jury is

1 returning to the courtroom, 9:29 a.m.

2 Ms. Briscoe, members of the jury, you may be seated.

3 Mr. Murphy, counsel, visitors in the gallery, you
4 may be seated.

5 Cause F00-02424-M, styled the State of Texas versus
6 Jedidiah Isaac Murphy, charge of the Court in the penalty
7 phase of the trial reads as follows:

8 (Charge of the Court Read)

9 THE COURT: Ms. Briscoe, members of the jury,
10 beginning on page 8 and following through page 10 are
11 possible special issue verdict forms, whatever the decision
12 of the jury may be. I would like to also call your
13 attention, Mrs. Briscoe, to the last line on page 10, verdict
14 of the jury, so after you've answered the special issues,
15 however you and the jurors do, then there is another
16 appropriate line at the bottom signifying that it is your
17 verdict.

18 Proceed with counsel. The State has the right by
19 law both to open and close. The State has informed opposing
20 counsel and the Court that they will begin in the person of
21 the Honorable Mary Miller.

22 Ms. Miller.

23 (Argument By Ms. Miller)

24 MS. MILLER: May it please the Court, counsel.
25 Ladies and gentlemen of the jury, I just want to

1 thank you to begin with for the attention that you have paid.
2 It seems like it's been ages since we started this trial, and
3 I know you're probably ready for this to be over, but this is
4 probably the most important part of the trial.

5 You have two special issues that you must answer,
6 and depending upon how you answer those special issues, the
7 Judge will then be required by law, if you answer them yes
8 and no, to sentence this defendant, Jedidiah Isaac Murphy, to
9 death.

10 On voir dire we talked to each and every one of you
11 about those special issues and some of the terms that were in
12 those special issues and how they would not be defined, but
13 that you would basically have to use your common sense and
14 the common everyday definition of what they were. The first
15 special issue is Special Issue Number 1, and to remind you
16 and as the jury charge tells you, the State has the burden of
17 proof in order to prove beyond a reasonable doubt that
18 Special Issue Number 1 should in fact be answered yes, a
19 burden that we gladly accept, one that we believe that we
20 have met.

21 The special issue is as follows: Do you believe or
22 do you find beyond a reasonable doubt that the defendant,
23 Jedidiah Isaac Murphy, Jim Murphy, Jim Ed Hines, Jim Kines,
24 Jim Tolar, whatever you want to call him, do you find beyond
25 a reasonable doubt that there is a probability that the

1 defendant will commit criminal acts of violence that will
2 constitute a continuing threat to society.

3 Now, it's real interesting because we talked to each
4 and every one of you on voir dire about what you believed
5 society meant. And every single one of you said that society
6 was not limited to the prison. Yet what was the evidence
7 that the defense brought to you to try and say that the
8 defendant was not going to be a future danger? They brought
9 you two doctors to say, well, in prison the defendant
10 probably would not be a continuing threat to society. In
11 prison this man probably would not commit criminal acts of
12 violence that would constitute a continuing threat to
13 society. But the interesting thing, ladies and gentlemen, is
14 neither one of those, Dr. Crowder nor Mary Connell, would
15 even be qualified to sit as a juror on a death penalty case
16 because they limited the criminal acts of violence to
17 murder. That's what Dr. Crowder said. In order for a person
18 to be a continuing threat, in order for this person to be a
19 continuing threat, you have to limit it to prison and it
20 would have to be murder that he commits. Well, as each and
21 every one of you know through voir dire, someone who limits
22 it that way, wouldn't even be qualified to sit where you're
23 sitting. They want you to narrow the focus and narrow the
24 scope. But that's not what the law says, ladies and
25 gentlemen. Would this man -- in all probability --

1 MS. BALIDO: I object to the prosecutor's
2 argument. That's not what the law is. She's trying to tell
3 the jury what society means.

4 THE COURT: The charge contains the law
5 applicable. The Court declines to make any further comment
6 in this regard.

7 MS. MILLER: And the law says you cannot limit
8 criminal acts of violence --

9 MS. BALIDO: Judge --

10 MS. MILLER: -- merely to murder.

11 MS. BALIDO: -- the jury can decide what
12 society means.

13 MS. MILLER: You cannot limit it to murder.
14 The law says that.

15 MS. BALIDO: Judge, may I have a ruling?

16 THE COURT: Objection is overruled.

17 MS. MILLER: And that's exactly what Dr.
18 Crowder wants you to do in order to believe that this
19 defendant would not be a future danger. Probability, more
20 likely than not, 50.1 percent, tip the scales. That's what
21 you have to look at.

22 Now, every one of you also said that one of the best
23 predictors of the past -- of the future is the past. Look at
24 someone's behavior to look and see what they're going to do.
25 Gilda Kessner, Dr. Kessner said, oh, you don't look at

1 somebody's past in order to look at future dangerousness,
2 don't look at whether or not they raped, don't look at
3 whether or not they robbed, don't look at whether or not they
4 kidnapped, don't look at whether or not they committed
5 criminal acts of violence prior to this capital murder. All
6 we really want you to look at is this particular little
7 capital murder. Don't look at anything else that this man
8 has done in the past. And then we're going to come up with
9 some number that says 26.3 percent up to 29.1 percent. And
10 yet isn't it very interesting that they don't want to look at
11 anything else in the defendant's past to say whether he's
12 going to be a future danger in prison, limiting it once again
13 to in prison. Yet every one of their experts said, yeah, if
14 you include society as the free world, every one of them
15 would be afraid and said that he would be a continuing threat
16 to society in the free world.

17 Well, ladies and gentlemen, you all know, we talked
18 about the Texas 7. They were doing life sentences. They
19 would not have even been considered a future danger according
20 to the statistics that their experts want you to look at.
21 But let's look at what the defendant has done in the past,
22 ladies and gentlemen, because the best predictor, I would
23 submit to you, of the future is the past.

24 What is this defendant's resume? Well, you know
25 that in 1993 or in 1994, he took Mandy Kirl, a girl that he

1 had just met, for a ride in a pickup truck. And what does he
2 do? He parks and they're just sitting there and he reaches
3 under the front seat and pulls out a gun. And he looks at it
4 and she said she thinks he's looking to see if it's loaded.
5 And then what does he do, he holds it to her left temple,
6 pressing against her head. Are you afraid to die? And you
7 heard what Ms. Kirl said. She was terrified. She didn't
8 know whether she was going to live or die then. And how did
9 the defendant act as he was doing that? Cool, calm, and
10 collected as he is holding the cold metal of that gun to her
11 head. Kind of interesting that that's the very same way that
12 Ms. Cunningham died, isn't it?

13 MS. BALIDO: Judge, I object. That's -- she's
14 trying to prove up an extraneous offense by the -- by the
15 conviction of the capital murder.

16 THE COURT: Objection is overruled.

17 MS. MILLER: Then, you know that the defendant
18 had an aggravated assault in 1993 against Chelsea Willis.
19 Pulls a knife out, breaks her nose. Yet, oh, you know,
20 forgive him, he was drinking, he didn't really mean it,
21 because as he's told people, I've never intentionally hurt
22 anyone.

23 You also have a burglary of a habitation. You have
24 burglary of a vehicle on June 2nd of 1994. And what does the
25 defendant get? He's placed on probation and sent to boot

1 camp. We as a society tried to rehabilitate this man. We
2 gave him the opportunity to conform his actions to the norms
3 of society. We sent him to boot camp to get some discipline.
4 And when you look at what he told some of the doctors, it was
5 a very good experience for me. I really learned a lot. Did
6 it stop him from his criminal behavior? No, it sure didn't
7 because what does he do? He comes up to Dallas and commits a
8 theft when he's in a stolen vehicle and that was August 18th
9 of 1995. Once again society says, well, okay, we're going to
10 give you another chance, Mr. Murphy, another chance to try
11 and conform, another chance to get some help. And what does
12 the defendant do? Thumbs his nose at it once again,
13 manipulates the system once again. Then what does he do?
14 I'm sorry, he's got the possession of marijuana, March 14th
15 of 1996. And then there's the aggravated assault, I'm sorry,
16 on August 17th of 1997, of Chelsea Willis. He's called
17 out -- the police are called out because what does Chelsea
18 do? Well, I was tired of his drinking. I woke him up when
19 he was passed out so it's really my fault because I shouldn't
20 have woke him up. Well, this man has manipulated everyone
21 around him to make them think that they're the ones at fault,
22 that they're the ones that are responsible for his actions.

23 So what does he do? He starts a physical fight with
24 the mother of his child. And then one of the friends tries
25 to step in and break it up to prevent this man from beating

1 on Chelsea Willis. And what happens to Jeanne? He slugs her
2 in the face, punches her in the eye, and then he breaks
3 Chelsea's nose and then he holds a knife on her.

4 August 26th of 1997, you have the kidnapping,
5 Sherryl Wilhelm in Arlington. Look at Defendant's Exhibit
6 Number 62 and State's Exhibit Number 141. Remember, Sherryl
7 Wilhelm gave a composite right after it happened. And
8 Defendant's Exhibit Number 62 is what Chelsea said, look,
9 this picture was taken at my dad's in August of 1997. Look
10 at the uncanny resemblance, ladies and gentlemen, between the
11 picture of the defendant in August of 1997 and the composite
12 that Sherryl Wilhelm did. Who committed that kidnapping?
13 Who committed that aggravated robbery, that car jacking in
14 1997? The defendant. Proved it beyond a reasonable doubt?
15 You bet. And what do you know about it? I submit it's a
16 reasonable deduction from the evidence, ladies and gentlemen,
17 from all of the evidence that's been presented that had Ms.
18 Wilhelm not jumped out of that car, we probably would have
19 had another dead body. She told you, I knew that if I didn't
20 get out of that car, then I probably would never get out
21 alive.

22 And so what did she do? She risked life and limb,
23 suffered at the hands of this man in order to get away from
24 him. This is the defendant's handiwork, ladies and
25 gentlemen. This is his resume. This shows what type of

1 future danger he is to society. And not just society in
2 prison, but all of us, society in general.

3 May 14th of 1999, the defendant gets a driving while
4 license suspended. Then in January, February of 2000, you
5 have Shirley Bard who was working with the defendant, who was
6 training the defendant, trying to help him better himself,
7 look, Jim, I'll teach you, I'll help you, I'll do what I can
8 to help you learn a trade. And what does he do? I'm going
9 to knock your fucking head off. I am going to blow your
10 fucking head off. You're not going to know when it's
11 coming. You're not going to know how or where. It might be
12 at your house because I know where you live. It might be at
13 your other job because I know where you work. You never know
14 when it's going to come. And they want to blame the
15 defendant's actions on alcohol and drugs. But you heard
16 Shirley Bard. He was not intoxicated. He wasn't even
17 drinking. He was not under the influence of anything when he
18 makes these threats on three or four separate occasions
19 against a woman who had tried to help him. He shows how he
20 repays people's kindness. I'm going to blow your fucking
21 head off. That's what kind of respect the defendant has for
22 society and for women. Because if you look at it, most of
23 the people he preys on are people he thinks are going to be
24 weaker than him, the fairer sex, people that he thinks he can
25 control and intimidate and manipulate.

1 What else do you know? He bragged about his prior
2 arrests. He wasn't ashamed of the fact that he had been
3 arrested before. It was like a badge of honor to him.

4 THE COURT: Per your request, 15 minutes.

5 MS. MILLER: And what else did he do? He
6 bragged about the types of weapons that he could get his
7 hands on, AK 47. I've got an AK 47. I can get anything I
8 want. Shirley Bard was scared to death, so scared she even
9 called the police department, but she didn't know the
10 defendant's true name.

11 Future danger, ladies and gentlemen? Not beyond a
12 reasonable doubt, but all doubt. Not just a probability.
13 Ladies and gentlemen, when you look at this defendant's
14 resume, I would submit to you that it is a certainty that
15 this man is a future danger to our community, to society,
16 regardless of where he is confined.

17 The answer to Special Issue Number 1 should be
18 answered yes.

19 Let's talk about Special Issue Number 2.
20 Mitigation. Should you change a death sentence to one of
21 life? Special Issue Number 2 reads as follows: Do you find
22 from the evidence, taking into consideration all of the
23 evidence, including the circumstances of the offense. Now,
24 it's been awhile since we talked about the circumstances of
25 the offense, but that's very important when you're looking at

1 Special Issue Number 2. What you've heard recently is mostly
2 about the defendant or really kind of makes you wonder who's
3 on trial. Heard a whole lot more about the defendant's
4 brother really than the defendant, as far as mitigation
5 goes. The defendant's character and background and the
6 personal moral culpability of the defendant, that there is
7 sufficient mitigating circumstance or circumstances to
8 warrant that a death sentence -- I'm sorry, that a sentence
9 of life imprisonment rather than a death sentence be imposed.

10 When you look at that, is there sufficient
11 mitigating circumstances? Well, ladies and gentlemen, I
12 would submit to you that there's not a single solitary
13 mitigating circumstance in here, let alone sufficient
14 mitigating circumstances to change a death sentence to one of
15 life.

16 The facts of the offense. What do you know about
17 the facts of the offense? Bertie Cunningham, an 80-year-old
18 woman, minding her own business, somehow came into contact
19 with this defendant. And we know what the results of that
20 contact were. She's dead. She's dead because this defendant
21 put a bullet in her brain.

22 Circumstances of the offense? Look at his own
23 confession. Look at the versions of the events that the
24 defendant gave to their experts. Mary Connell has in here --
25 says he had the gun in his right hand waving it in broad

1 daylight and he transferred the gun from his right hand on
2 top of the trunk to his left hand and it went off. There is
3 no way when you transfer the gun on the top of the trunk that
4 you can have a contact wound to an 80-year-old woman's head.
5 He has lied consistently to the police, to the experts, to
6 his family, and to his friends because the physical evidence
7 shows you that this was a cold-blooded execution of an
8 80-year-old woman. And you know from their own experts, Dr.
9 Peerwani, and our expert Dr. Duval, that in all likelihood
10 she didn't die immediately. She rode around in the trunk of
11 that car while that defendant is living it up, buying
12 scooters, trying to get her money out of the ATM's.

13 The defendant's background and character. Well,
14 you've got it all right there, ladies and gentlemen. If
15 Donnie Kines can rise above it, if Donnie Tolar can rise
16 above the background, then why can't this man who had many
17 more opportunities than Donnie did?

18 Personal moral culpability of the defendant.
19 Personal moral culpability of the defendant. This is what he
20 chose to do, ladies and gentlemen. There was no accident
21 about it. And their own experts brought in the
22 interpretations of the MMPI, and the MCMI-III. Read those,
23 ladies and gentlemen. This -- it is chilling what it says
24 about the defendant. This client's profile matches that of
25 the Megargee Type H offender, one of the most seriously

1 disturbed inmate types. Adjustment to prison appears to be
2 difficult for them. The relative frequency of this
3 defendant's profile is only 2.3 percent. His feeling that
4 punishment should not have the affect of preventing him from
5 acting as he wishes results in a seesaw attention with
6 others. You know he doesn't think punishment should stop him
7 because we've tried. We've tried rehabilitation. We've
8 tried punishment. And what has he done? He has escalated.
9 And we're now here because of a capital murder.

10 Ladies and gentlemen, the last thing that Bertie
11 Cunningham gazed upon on October 4th of 2000, was the face of
12 evil. The last face that she saw as she was taking her dying
13 breaths as a result of the hands and actions of this man was
14 the face of evil. And over the last three weeks of testimony
15 you have gazed upon the face of evil, ladies and gentlemen.
16 And it is embodied in that man right there. I would submit
17 to you that all of the evidence in this case shows that
18 Special Issue Number 1 should be answered yes and Special
19 Issue Number 2 should be answered no. This man cannot --
20 cannot be allowed to be a continuing threat to anyone,
21 because we know exactly what he will do if he is allowed to
22 live.

23 THE COURT: Defense may proceed.

24 MS. BALIDO: May it please the Court.

25 THE COURT: Ms. Balido.

1 (Argument By Ms. Balido)

2 MS. BALIDO: Ladies and gentlemen, let's get
3 something out in the open right now. There is no one in this
4 courtroom that is responsible for the death of Ms.
5 Cunningham, except for this man Jim Murphy. There is no one.
6 There is no one that should be held accountable for the death
7 of Ms. Cunningham than that man sitting right there, Mr.
8 Murphy. He did it by his own hand. He said it in the words
9 of his confession in his voluntary statement. And you said
10 so by your verdict. You have held him accountable. You have
11 held him responsible for the death of Ms. Cunningham. And
12 now what your decision is, is what is the appropriate
13 punishment. And what you have to do is you have to go back
14 to the charge and look at the charge and answer those
15 questions. Okay. You can't just sit here as you're sitting
16 here right now and say that guy deserves the death penalty.
17 How do I answer to get there. You've got to look at Special
18 Issue Number 1 and see if the State, who has the burden of
19 proof -- the burden of proving that issue, should be answered
20 yes beyond a reasonable doubt. Have they done it? If they
21 have, answer the question yes and go to Special Issue Number
22 2. If they have not, answer that question no, and he will
23 spend the rest of his life, as a reasonable deduction from
24 the evidence, the rest of his life in the penitentiary, 40
25 calendar years, day-for-day, week-for-week, month-for-month,

1 year-for-year in the penitentiary system. If you answer
2 Special Issue Number 1 yes and you get to Special Issue
3 Number 2 and you find that there's no mitigating
4 circumstances, then you sentence -- or the Judge will
5 sentence the defendant to death.

6 In that charge however you will not find an
7 instruction that in any type of case the death penalty is
8 mandatory or that because of a certain type of crime, you
9 automatically have to answer those questions in such a way --
10 in such a way that the death penalty is mandatory or
11 automatic. That's not in that charge. You've got to look at
12 Special Issue Number 1 first, answer it, and if you answer it
13 yes, look at Special Issue Number 2. That's just so
14 important.

15 I'm going to talk to you just a little bit about the
16 death penalty generally, and we talked about it on voir dire.
17 You do not have to kill this man to do justice in this case.
18 You do not have to kill him to do justice in this case. No
19 matter what your verdict is, no matter how you answer those
20 questions, it's a reasonable deduction from the evidence
21 you've heard that he's 25, 24, 25 years old, he will spend
22 the next 40 years of his life in the penitentiary, and it's a
23 reasonable deduction from the evidence that he won't ever see
24 the light of day outside the penitentiary setting. So what
25 that means is that with the death penalty, the time of his

1 death will either come at the hands of the State on a date
2 certain or it will be left to the hand of God. It will
3 either happen in two years or three years when all the
4 appeals are done, or it will be left to the time that God
5 decides it's time for him to die and to come face him on his
6 judgment day. That's what it looks like. That's what it is.

7 Now, on voir dire a lot of you mentioned, when we're
8 talking about punishment, and we're talking about the death
9 penalty and murder cases, that you believe an eye for an eye.
10 But when you look at it that way, that he'll spend the rest
11 of his life in the penitentiary, and its just a matter of
12 when he's going to die and at whose hand he's going to die
13 from, what the death penalty turns into is an act of revenge,
14 an act of retribution, an eye for an eye, Old Testament eye
15 for an eye mentality. And I just want to throw something out
16 to you to think about. Ghandi said in the face of
17 persecution of his people, persecution in the killing of his
18 people when they were trying to assert civil disobedience and
19 their civil rights, Ghandi said, okay, they're killing us.
20 They're ending the lives of our people. If we act or try to
21 assert an eye for an eye, we make the whole world blind. And
22 I'd just ask you to think about that for a moment.

23 Let's look at Special Issue Number 1, and let's talk
24 a little bit about the burden of proof because it's so, so
25 important in this case. They must prove to you beyond a

1 reasonable doubt that Special Issue Number 1 should be
2 answered yes. And it's so important because you are the only
3 people that will make that decision. There won't be a
4 decision in two years or somebody else to evaluate him in 2
5 years or 5 years or 10 years or 40 years to say he is no
6 longer a continuing threat to society. Only you are the
7 people that are charged with making that decision so it's so
8 important that you hold the State to its burden of proof and
9 proving that Special Issue Number 1 should be answered yes.
10 Make them prove that to you.

11 And remember what we talked about on voir dire that
12 there's no automatic answer. Just because you found him
13 guilty of capital murder, it should not be automatically
14 answered yes, that he's going to be a continuing threat to
15 society. So let's look at the evidence and see what the
16 situation is. If you believe that he will spend the next 40
17 calendar years in the penitentiary, his society that he is
18 going to be around is going to be a penitentiary setting.
19 Okay. And you heard the State talk about society as a
20 whole. Basically that's up to you to decide how you're going
21 to evaluate that word "society." The Judge isn't going to do
22 it. The lawyers can't do it. The courts can't do it. It's
23 only what you decide society is.

24 And let's go ahead and talk about the Texas 7 for a
25 moment. I guess the D.A.'s want to go ahead and say there's

1 no way that the Texas Department of Criminal Justice
2 Institutional Division can do their job. That there is no
3 way that they can do their job. I guarantee you that's not
4 what TDCJ says to the legislature when they ask for millions
5 of dollars to build super max prisons and everything else.
6 So I guess they -- that the D.A.'s have decided because of
7 the Texas 7, that future dangerousness should always be
8 answered yes. Because there is no way they can house people
9 that commit murders. But that's just not so. If you
10 remember what Dr. Kessner said, and she said it in response
11 to one of Mr. Davis's questions about the Texas 7. Are you
12 saying that these -- you know, that these people -- I don't
13 really remember the question, but her answer was important.
14 Her answer was if the policies and regulations of the Texas
15 Department of Criminal Justice were followed and obeyed by
16 the staff, there would not be a danger. But the D.A.'s want
17 you to look at the Texas 7 and put fear in your mind that the
18 TDCJ cannot do their job. But, ladies and gentlemen, they're
19 in the business of housing people, and they're in the
20 business of housing people that have antisocial disorders.
21 You've seen it. You've seen the population graphs about how
22 many people -- that's what they are set up to do. They're
23 set up to house and keep from the free society in custody
24 people like Jedidiah Isaac Murphy who have been committed --
25 I mean, convicted of capital murder. That's what their job

1 is. And if they do their job right and follow the policies
2 and the regulations, there is not a danger to free society.

3 So what do we do? We look at the society inside the
4 prison. And I agree with Ms. Miller on this point. I'm sure
5 y'all will be surprised. But let's look at his actions in
6 jail, in an institutional setting, and see what those actions
7 are and see whether or not past behavior can prove future
8 dangerousness. Let's look at that.

9 For the last nine months this man has been in the
10 custody of the Dallas County Jail. He can't get toilet paper
11 without talking to somebody. He can't eat without talking to
12 somebody. He can't get his mail without talking to
13 somebody. He can't come to court without talking to
14 somebody, all employed by the Dallas Sheriff's Department.
15 He can't go take a test over at Parkland without leaving this
16 building and going to Parkland and coming back. He can't go
17 to all these different tests that's being taken. He can't
18 have access to any experts, any lawyers, any visitors,
19 anything without being talked to or touched by somebody that
20 works for the Dallas County Sheriff's office. I'd say he's
21 come into contact with hundreds if not thousands of people
22 over at the Lew Sterrett Justice Center.

23 And who does the State come to prove to you beyond a
24 reasonable doubt that he's going to be a future danger in the
25 penitentiary, but two incidents, one which is a suicide

1 attempt which they don't even think was even a reg -- I mean,
2 a serious suicide attempt. That sometimes as the testimony
3 showed -- sometimes that's a ruse. Sometimes people try it
4 to escape. Sometime people are trying to hurt correctional
5 officers. But everyone said, no, that wasn't this
6 situation. Maybe he was just trying to get attention. And
7 one scuffle in jail that was testified to yesterday by the
8 jail nurse, a scuffle that was so unimportant that no -- no
9 additional charges were filed in the jail and the person that
10 supposedly got kicked in the chest didn't even think it was
11 important to come down here and testify about it. Those are
12 the two incidents that they show that he's going to be a
13 future dangerousness in the jail.

14 They want you to look at his other crimes. Okay.
15 Well, let's look at them. Possession of marijuana, driving
16 while license suspended, unauthorized use of a motor vehicle,
17 or I guess that was the theft case, burglary of a motor
18 vehicle and burglary of a friend's house, and the assault on
19 Chelsea. Well, let's look. He was already on probation for
20 burglary of a habitation and picked up a Dallas County
21 unauthorized use of a motor vehicle. And the prosecutor
22 keeps on talking about what society did to him then. Well,
23 you can check the records and you can see that society in
24 that situation was this court. And this court decided that
25 he was such a danger to society, that they put him back out

1 on probation. Okay. That's what society, meaning this
2 court, did to him after they knew all these other things had
3 happened.

4 Additionally, the records also show that there was
5 not a motion to revoke his probation until this case came up
6 and he was such a bad probationer. He was such a danger to
7 society, he was such -- you know, everything else that -- you
8 know, he's such a danger of society, but they didn't file a
9 motion until this case came up, regardless of what happened
10 after that.

11 What you don't see in those records is any kind of
12 problems in the Van Zandt County jail when he got arrested,
13 the Terrell jail, the Wills Point jail, or wherever he was,
14 or even the Dallas County Jail on those occasions to show
15 that he would be a future danger if he was inside an
16 institutional setting.

17 You additionally have the boot camp records where he
18 was actually a part of TDCJ, the boot camp, and there were no
19 disciplinary infractions. I submit to you that shows that he
20 does well in an institutional setting, when he's away from
21 the alcohol, when he's in a very structured environment that
22 are set up to deal with the types of antisocial traits that
23 he has.

24 And then we get to the extraneous offenses. And you
25 need to read the charge when it talks about extraneous

1 offenses, because they must prove each one of these
2 extraneous offenses to you beyond a reasonable doubt. And
3 you cannot take into consideration that he's been convicted
4 of capital murder to make you think that's more true, that
5 one of these -- or that you think that one of these
6 extraneous offenses proves that he did all of these
7 extraneous offenses. They must prove each and every one of
8 them to you beyond a reasonable doubt.

9 Now, the first one is Mandy Kirl. Now, there is no
10 police report because she never filed a police report because
11 it wasn't important enough to her to call the police, even
12 though supposedly he held a gun to her head. He (sic) knew
13 where he lived. He (sic) knew who he was, but she didn't
14 think it was important enough to call the police. She's a
15 friend of Shod's and they went to go get firewood in the
16 middle of the night during a party alone. And you know from
17 Chelsea Willis that they still saw each other after this
18 party. And from the -- that witness's own words she said
19 that she wasn't too afraid of him to go out and talk to him
20 at the street by herself after it happened, to tell him off.

21 Secondly, Shirley Bard. Again, no police report
22 filed although she said that she didn't know who he was, but
23 he did brag about his criminal record and I didn't quite
24 really understand that. But I think you can tell that
25 Shirley Bard pretty much can take -- can give out as much as

1 she can take. And maybe they get did get in a verbal
2 altercation and maybe there were some words that were flying,
3 but have they proved that to you beyond a reasonable doubt.

4 And then we get to this kidnapping in Arlington.
5 And there is absolutely positively not one doubt in my
6 mind --

7 MR. DAVIS: I would object to the personal --

8 THE COURT: Sustained. Confine your argument
9 to other -- matters other than personal opinion.

10 MS. BALIDO: Ms. Wilhelm believes to the
11 bottom of her soul that Jedidiah Isaac Murphy did that. You
12 saw it -- I mean, you saw what she says. But does that make
13 her eyewitness identification, and that's all they have in
14 this case is this eyewitness identification, any less
15 questionable? Now, you have a chance -- if you have a
16 dispute about what her testimony was, to ask for certain
17 parts of her testimony with specificity. And how she
18 identified him went like this. It happened to her, she
19 talked to the police. They did this composite photograph.
20 She gave a description to the police about a young man, a
21 certain weight, a certain height with olive skin. The
22 composite was done, and then it was dropped for a certain
23 amount of time or they couldn't find him. Then, a few years
24 later, and she told you that every time she hears something
25 about a kidnapping in a car, her radar goes up. She hears

1 this for a second and kind of brings up the emotions again.
2 She looks up, she sees his face. She looks on the Internet a
3 little bit, confirming to herself that this is the same man.
4 It looks like the man that did this to her. Talks to her
5 mother. You know, that picture, yeah, that does look like
6 the man that did it to you, confirming it again. So she
7 calls the police officer and says the man that kidnapped the
8 lady in Garland is the man who kidnapped me. So lo and
9 behold, here comes the Arlington Police Department with a
10 picture of the man who kidnapped Bertie Cunningham and puts
11 it in a lineup and of course the lineup is -- and she picks
12 out Jim Murphy. And then she comes to court, and I think
13 that the record will show you that her testimony in the
14 courtroom when she testified was that she came down on a
15 pretrial hearing and she came in and Mr. Davis asked her do
16 you see the person that kidnapped you in the courtroom today
17 and she said no. Later on, he said do you see the person in
18 the courtroom that you picked out of the lineup. And she
19 looked again and said yes.

20 Now, do you see the person that kidnapped you that
21 day? And she said yes, and then she came into court and
22 identified him. Again, it's ever going, ever confirming this
23 information. This is very, very tough because this is one of
24 those eyewitness cases that has no physical evidence, no
25 fingerprints, no DNA that's going to come back in 15 years

1 and say he's not the man. Your decision is the final
2 decision on this. No other person or no other jury has heard
3 these extraneous offenses before. There are no judgments,
4 there are no sentences. That's for you and you alone to
5 decide.

6 And to believe that he committed that offense in
7 Arlington, you have to believe that he worked a full shift --

8 THE COURT: Counsel, per your request, 20
9 minutes.

10 MS. BALIDO: Thank you, Judge.

11 He worked a full shift at his job. He left at his
12 regular time. He either hitchhiked or took Chelsea's car
13 over to Arlington by 11:45, kidnapped Ms. Wilhelm, dumped her
14 out of the car, and somehow got to Wichita Falls where there
15 was another person that was kidnapped and the man who -- I
16 mean, another person that was mugged and the man who mugged
17 that person was chased by this Felix Ozuna guy and he
18 described him to the police --

19 MR. DAVIS: I'm going to object to that. That
20 was excluded as hearsay, as I recall, Your Honor.

21 THE COURT: Sustained.

22 MS. BALIDO: And all the property was left,
23 including Ms. Wilhelm's car was left in Wichita Falls and
24 found the next morning, but Jedidiah Murphy is at work just
25 like any regular day that night and worked another full

1 shift. And we've got Chelsea who came in with her calendar
2 that said it was just like any other day. And don't you know
3 that if he took her car for any amount of time, she would
4 have thought he was drinking and she would have said big
5 fight with Jim on her calendar, just like she did every time.

6 It's problematic because it's hard to prove how it
7 was just another day, but there are work records and there's
8 Chelsea's calendar.

9 The State must prove to you beyond a reasonable
10 doubt that he committed those extraneous offenses and that
11 the person that did that -- and that is in the composite is
12 Jim Murphy, not Matt Murphy who looks the same, not Warren
13 who looks like the suspect they thought in Wichita Falls and
14 not half the D.A. interns that have been sitting in here all
15 afternoon, young, 25, dark hair, short on the sides.

16 I'm just going to talk just real briefly for the
17 next couple of minutes about Special Issue Number 2, but what
18 you have to know is that Special Issue 1 must be proved
19 beyond a reasonable doubt. And just because you find him, if
20 you do, to be a continuing threat to society, whatever you
21 find that to be, doesn't mean that he should get the death
22 penalty. Because you have to look at and must consider all
23 the evidence in regard to mitigation in this case. Because
24 this case is more than the events of October 2000. You know,
25 you read in the paper of stories of children that have --

1 that witness their father beat their mother, knock the teeth
2 out of their mother. You see stories in the paper about
3 children who observe harsh discipline, whippings and beatings
4 of other siblings, locking in rooms, and you think to
5 yourself those kids will never be the same. They don't have
6 a chance. And that's what mitigation is. That's what
7 mitigation is. Because he's one of those kids. And this is
8 more than free will and choice and stepping away from that
9 sort of situation as the State would have you believe,
10 because it wasn't Jim's choice to be born of a son-of-a-bitch
11 father and a mother who left him at Buckner, not once but
12 twice and had him run down the street after her and after the
13 car. It's not his choice to go to the Tolars, and whatever
14 you believe about the Tolars, the fact of the matter is that
15 he didn't have a choice to go there and he didn't have a
16 choice as a child to leave, regardless of what informal
17 choice they gave him. The choice between the brother that's
18 the only stability he's ever had and staying with a family.
19 It wasn't his choice to go to the Murphy's where he got to
20 have a glimpse of what a real life might really be about only
21 to have that snatched away when his adoptive mother would not
22 talk to him at all or acknowledge his existence after he
23 chose to go with the parent he was closer to. Those were not
24 choices that he made. Those are institutional failures.
25 Those are family failures. Those are society failures to

1 protect the child that he was and to try to help the adult
2 that he is.

3 Now, we're being accused of trying to excuse his
4 behavior through mitigation. And I'm not saying that because
5 of that he's not responsible for Ms. Cunningham's death. He
6 should be held accountable for Ms. Cunningham's death. I'm
7 not excusing his behavior one bit. But you cannot tell me
8 that there has not been irreparable harm to that family when
9 you look at the kind of person that Donnie is. You look at
10 the kind of person that Jim is and you look at the kind of
11 person that Tonya Thorp is trying to be but struggles with
12 everyday. All the children in that family have problems.

13 It's not just Jim. Jim has the additional problem of he's
14 addicted to alcohol. And what it shows -- it's not an excuse
15 what it shows, but it shows how he's different from what we
16 normal law-abiding people are. It shows how he can come to a
17 place in his life that he can hold a gun to the head of an
18 80-year-old woman and that's not outside the realm. I
19 mean -- and it's troubling and we talked about it on voir
20 dire how it's troubling because that sort of thing is -- is
21 mitigating because he's had all these problems, but it's also
22 aggravating and shows that he's dangerous. And that's what
23 the problem is, and those are the sorts of things you have to
24 sort out.

25 But it also explains the things he did afterwards

1 that he went around, he went to Tonya's house, he went by
2 Cruz's house and dumped off some stuff for his family. He
3 was buying presents for people because he was leaving one way
4 or another. He may have been going to Florida. He may have
5 been going to kill himself.

6 THE COURT: 25 minutes, Counsel.

7 MS. BALIDO: Thank you, Judge.

8 What he's trying to do is he's trying to -- I don't
9 know what he's trying to do, but what he is doing is he's --
10 he's signing these receipts and he's leaving bread crumbs to
11 get caught. Okay. It was open and notorious what he was
12 doing. People were looking for him. There were receipts all
13 over town. And he was looking to get caught, and the police
14 finally caught him. And what's the first thing that he does
15 to Matt Murphy (sic) when he's caught, he accepted
16 responsibility that he's the person that killed her and told
17 them where the body was.

18 Now, you've heard of some bad cases in this
19 courtroom, and they were brought up by the State. You've
20 heard of people sodomizing their victims after their death.
21 You've heard people slitting the throats of children to not
22 leave witnesses. You've heard of people beating some people
23 to death. You've heard of people -- you've heard of the
24 Texas 7 and how they killed a police officer on Christmas
25 Eve, you know, while they were trying to rob somebody after

1 they had broken out of the prison setting. Those are the
2 kind of cases that you've heard about that -- that have
3 received the death penalty and the State is going for the
4 death penalty on.

5 But those are not the facts of this case, and I say
6 that with all respect, with not trying to diminish the way
7 that Ms. Cunningham died. But those types of cases are not
8 Jim. And there is something to be said for that. Jim is
9 going to prison for the rest of his life. And they say that
10 in prison you're born again every morning and you die again
11 at night and you wake up another day and you're born again
12 that morning. He's going to live the rest of his life cold
13 and afraid and alone, and that's exactly what he deserves,
14 because that's what happened to Ms. Cunningham. And when he
15 dies in prison, he's going to die cold and afraid and alone,
16 and that's what he deserves. But the question is, is that
17 going to be done by the hand of the State or by the hand of
18 God. And as the Judge told you, the mitigation question is
19 the mercy question. And I ask each one of you to show mercy
20 for Jim Cun -- Jim Murphy. Not because he deserves it, and
21 not because he showed one ounce of mercy to Ms. Cunningham in
22 this case. But only because mercy was given to you, and it's
23 yours to give.

24 THE COURT: Ms. Little.

25 (Argument By Ms. Little)

1 MS. LITTLE: Thank you.

2 Your Honor, ladies and gentlemen.

3 It's horrible, isn't it? Everything about this is
4 horrible. What I would like to say to you first is that we,
5 Jennifer and Mike and I, are also members of this community.
6 We share your values, your concerns about crime, and what
7 happens in our community. I need to reiterate to you though
8 that this is a case where you're going to be punishing --
9 you're going to be punishing. Either way it's a punishment.
10 There -- it's been said before. It's going to be said
11 again. There are no excuses for this. No excuses. No
12 excuses. But I hope when you're doing your deliberating,
13 that you'll realize that in a sense you've become inductees
14 into the Army being selected as jurors in this case.
15 Because, you know, it's not easy to kill a person, even if
16 you think they deserve it. So it's kind of necessary to
17 train you to get you ready so you can easily do it. And
18 that's done the same way in trials all over the country, as
19 it's done in the Army when there's a war. And that way is to
20 dehumanize the person who has been accused of the crime.

21 Now, Jim Murphy has done quite a bit of that himself
22 by his actions, but the best way to dehumanize is to make
23 everything black and white, everything simple, black and
24 white, no grays, no differences, no -- no consideration for
25 complexity in people, no consideration for that. So although

1 you can consider mitigating evidence, the State I'm sure, and
2 you know, we don't get to talk after they do, they're going
3 to suggest to you that there's not anything mitigating, that
4 everything is aggravating, and that is a decision that you
5 will have to make once you go back there to deliberate. But
6 I hope you will keep in mind that everything isn't simple. I
7 know -- I know that you will.

8 Mitigating things in the case of Jim Murphy can be
9 the background with his original family, the Kines, where his
10 father tried to drown children when he was a teenager, killed
11 a kitten with a fork, tried to sexually molest his cousin who
12 was 11, marries half a dozen women, winds up with Hope
13 Abbott, has more kids and more kids, and drinks and drinks
14 and drinks. Hope Abbott becomes ill. She, certainly in the
15 eyes of Jim, abandoned those boys.

16 Mary Connell told you that unlike most small
17 children who are in denial, these children early thought that
18 they had been thrown away. Thrown away.

19 They wind up being adopted by the Tolars, and I'm
20 not even going to try to figure out what happened at the
21 Tolar's, but Dr. Connell and Dr. Crowder both told you that
22 because of the behavior after, that there were some problems
23 in that home, some kind of problems in that home. Mr. Tolar
24 himself told you that it was unmanageable for them. They,
25 I'm sure, were trying to do something good. They wind up

1 with five boys and one of them is Donnie who is
2 uncontrollable, but he admitted that they did time-out by
3 locking Donnie up. How do you control a kid like Donnie that
4 doesn't bleed over into the other children? Whether it was
5 intentional or not, there were problems in that home with
6 abuse and discipline. I would submit to you that that's a
7 fair deduction from what you've heard.

8 Then the kids go to the Van Zandt County Children's
9 Shelter and we're back in the early 80's, so that means that
10 the preacher takes them there. There is no kind of court
11 proceeding to determine if there's been anything done
12 improperly. There's no lawyer appointed to represent the
13 children in the Van Zandt County Children's Shelter. So
14 there was never any kind of investigation done to determine
15 anything about these kids or their placement or what was
16 going on in that household, so we'll never know that.

17 Now, of course, we have all of these things. We
18 didn't have them then. We didn't have those things then. So
19 Jim winds up with another lucky break and he goes to the
20 Murphy's and it looks like the American dream to him. And at
21 first it is. But then you find out that there's abuse in
22 that family. There's a lot of drinking in that family, that
23 Matt Murphy himself slugged his father for abuse. And it
24 just keeps on keeping on, keeping on.

25 I would submit to you that by this time it's too

1 late for Jim anyway. The abandonment initially did it to him
2 probably and then whether the Tolars had any problems with it
3 or not, a little kid is being taken places and dumped and
4 taken places and dumped and taken places and dumped is not
5 going to probably have a very positive reception of the
6 motives of people that take them in, even if they're well
7 meaning, and especially with the circumstances and the
8 discipline in that home.

9 So Jim did have some things when he went to the
10 Murphy's. And then he started drinking. Because Jim is a
11 chronic alcoholic. Tracy told you there were problems in
12 that home. Lots of problems in that home. So we've got Jim
13 abandoned by his mother. Jim abandoned by the Tolars. Jim
14 abandoned by the Murphys -- Mrs. Murphy, and ultimately Mr.
15 Murphy. And that's his history. I'm not going to stand here
16 and tell you that Jim doesn't lie. He sure does. He lies
17 and he manipulates. That's right. He does that because
18 that's how he learned to survive as a child. Donnie
19 externalized it. Jim internalized it. Donnie didn't drink.

20 Now, these cases that are from the past seemly would
21 not be very significant I don't think as an individual one,
22 except perhaps for the burglaries, but those cases were never
23 revoked either. And the burglary of the vehicle that he had
24 was three months after he got a 10-year probation for it. He
25 stayed on those probations all these years, so you know he

1 had been doing something he was supposed to do, if not all.
2 And you know he's got a checkered past with it. He's works
3 awhile, does well for a while, falls off. You also know,
4 which I would consider to be a mitigating factor and I hope
5 that you will, is that he loves other people and he's loved
6 by them. He's not an antisocial personality disorder. He's
7 ashamed of what he did. He's ashamed for his family. He's
8 ashamed for the Cunninghams. He was a child who did not have
9 problems with the law when he was a young person. He started
10 running around with Shod Tarrant, and I would submit to you
11 that you know he has living relationships from what you've
12 heard. There are people who care about him. But you know
13 you have to know inside that's true, you have to know. You
14 know he has a narcissistic personality disorder which makes
15 him brag and be haughty and show off and run his mouth
16 because of his insecurity. You know that he has borderline
17 personality disorder, which also causes a lot of these
18 problems. And you know that he's an alcoholic. You also
19 know that he's tried to get help over and over and over
20 again.

21 Now, the State is going to say, so what, he never
22 followed through. I don't think you can ever get quite that
23 far with it. I don't think he could. But the fact that he
24 kept trying has to show you that he was trying to feel
25 better. He was trying to fix himself. He was trying and

1 trying. And then he'd fall off. He goes to AA. He goes to
2 all these mental institutions. These are attempts to avoid
3 misery. These are attempts to avoid pain. Unfortunately, he
4 does the drinking to avoid the pain usually.

5 The State is going to tell that you there's not a
6 remorseful thing about him. I submit to you that's wrong.
7 Everything has to be black and white to kill the enemy.
8 Everything has to be black and white to kill the enemy. We
9 do have in our law, the law of the land, certain instances
10 where specific intent to kill is okay. In this particular
11 state the only deadly weapon that can be used is a jury.

12 Remorse, I would submit to you, is very much
13 apparent in the life of Jim. He confesses to this crime. We
14 go down there to see him on the 7th of October, and I hope
15 you don't think I am so stupid that I would run around that
16 jail for three hours waiting to see him only to say, now you
17 be sure and keep on talking to the police. He gives them a
18 confession. He says it's an accident. In his mind I think
19 that's the way he can accept it, because he feels guilty
20 about it. They only want you to believe what suits their
21 case. Everything else is a lie. Jim lies about these
22 things, but not what fits the theory of the State's case.

23 THE COURT: Five minutes remain.

24 MS. LITTLE: So he gives how many statements?
25 The first one, the one we had to drag out of him where it

1 shows some remorse. Barely we know about that. Finally that
2 gets to you, but that's not remorse, according to Matt
3 Myers. The crying, the tears are not remorse, because you
4 see everything has to be black and white. I submit to you
5 that you can do something this horrible and still feel bad
6 about it and still feel remorse.

7 Matt Myers told you that Jim admitted that he had
8 been to that Walgreen's where they think that he got her.
9 Why would he do that? He continued to try to help them in
10 spite of all the legal advice he got. They played on his
11 guilt throughout this because he has it. Jason Bonham got
12 the information about where Ms. Cunningham was because he
13 reminded him of their friend in high school that killed
14 himself and the animals got him. And if you remember what
15 Jason Bonham said, Jim said, "oh, man."

16 Now, the State's going to make a big issue, I feel
17 sure, too, about him going and drinking after this murder and
18 that that shows no remorse. He didn't turn himself in.
19 That's no remorse. People respond differently to things even
20 when they're at fault. His response was to do what he always
21 does which is to go start drinking. He never, as Jennifer
22 mentioned to you, made any effort to hide from the police.
23 He put his own name and address on the credit cards. He knew
24 it was just a matter of time. He starts drinking to dull
25 what he's done and everything else about his miserable life.

1 And when they catch him, he helps them.

2 Now, Dr. Kessner talked to you about future danger,
3 and I -- I don't have time to go back over this, but you know
4 you have all these things to take in there with you. Future
5 danger is something that's been -- there have been a lot of
6 studies done and over the past hundred years you know that
7 there's a very small percentage of people who are a danger in
8 the prison population, even murderers of which they're 11
9 percent of the population. You know that Jim's base rate for
10 serious violence is 16.4, that he gets a plus 7.4 for the
11 robbery and in brackets 5.3 because of his prior prison term,
12 which is not even like a normal prison term. It's like going
13 to the military boot camp, and then they get out in a few
14 months. You know he conformed there. You don't have one
15 single piece of evidence -- one single piece of evidence to
16 make you think that Jim is going to be a future danger in the
17 penitentiary. His percentage for overall risk rate is 23.8
18 percent up to 29.1 percent. Now, Mr. Davis wasn't very happy
19 with the cap of 54 percent because probability is probably
20 50, 51.

21 I know that y'all have listened so carefully. I
22 want to thank you for it. I want you to please consider
23 everything you've heard. I'm not asking you to excuse one
24 thing he's done. But the evidence that you've got before
25 you, from the scientific studies, is that he is not likely to

1 be a future risk in the penitentiary. If you want to worry
2 that there might be another jail break later and kill him
3 because of that, then, you know, that's just not what's
4 supposed to be going on here. You promised us during jury
5 selection that because we have a victim here that is the most
6 unbelievably awful victim that you could ever hope to come up
7 with, that you would not automatically answer that first
8 issue yes. That was the oath you took when you became
9 jurors. Jim Murphy tried to kill himself in prison, in the
10 jail there. His other attempts were probably more attention
11 getting than anything else, but he cut his own throat and he
12 cut his own wrist down. Maybe he wants you to give him the
13 death penalty. I don't know. But I'd ask you to do this in
14 a civilized way, which I know you will, because if you do
15 just answer the future issue -- future danger issue based on
16 the capital crime, then we're not far enough away from just
17 going out to a tree somewhere. That's why we have this law.
18 That's why we need people like you that will follow it. You
19 can punish him. He'll be punished. He's not going to live
20 40 years I would submit to you. Dr. Kessner told you he's
21 more likely to be a preyed upon person than a predator. He's
22 going to be somebody's housewife. The principal said he was
23 a mousy little guy, talking big and bragging and acting like
24 he's a bigger shot than he is, and lying about where his hand
25 was shot or what caused that to happen. That's all just

1 bragging. You know, we don't give the death penalty for
2 lying and bragging. We don't do that in this State.

3 Please consider very carefully. You can take all
4 that evidence back. I put all those composites in evidence
5 to show that they're so generic, that they're very limited in
6 their ability to help find a person. The photo lineup is
7 horrible on the Sherryl Wilhelm case. They'd have you think
8 he went off to Wichita Falls and then got back. Now,
9 physically I guess he could do that, but I believe the way it
10 went in testimony is that the objection was sustained but the
11 door was opened. And it was testified that Ozuna chased a
12 170-pound Hispanic male three blocks down an alley. You've
13 got a purse found over here on Minnetaska. You've got a
14 broken car on the way to somewhere, away from Dallas over
15 here. You've got nothing to connect Jim with Arlington,
16 Texas, or Wichita Falls. And even if you think he might have
17 done that, Chelsea's diary shows you he was there. He's got
18 these ears. How could she not notice that. He didn't do
19 that.

20 And you remember on very voir dire we talked to you
21 about that van that was found close to a scene in a green
22 parka, a black male. A woman was raped in a college. She
23 accused him. He was convicted. He was sentenced. He went
24 to the penitentiary. And it turned out not to be him.
25 Please don't let that case tilt you into a death penalty for

1 Jim. Please don't. They have not proven it. And there's no
2 correction if you make a mistake.

3 I want to thank you very much. I know you're all
4 tired. We're all tired. I think this might be the most
5 important thing you ever do, and I know you'll give just
6 consideration to it. Thank you.

7 THE COURT: Mr. Davis, the State may
8 continue.

9 (Argument By Mr. Davis)

10 MR. DAVIS: May it please the Court.

11 Ladies and gentlemen, I'm just going to have a
12 little over 20 minutes to speak with you this morning. I
13 think we can all agree that this has been a very long and
14 horrible journey we've had to go through together. I would
15 assume that when we had you down here on jury selection, that
16 none of you in your wildest nightmares could ever have
17 imagined the kind of brutality in these types of crimes,
18 these types of actions that you've had to listen to these
19 past three weeks. And it's taken a lot of courage for you
20 people to hang in there, to be attentive, to really brace
21 what's really happening in this case. And for that I do
22 sincerely appreciate your courage and your attentiveness
23 throughout this case.

24 Now, at the outset let me just say that -- I want to
25 acknowledge that those were two very eloquent arguments given

1 to you by the defense. You know, it's only natural in a case
2 like this to show some emotion, to focus on the defendant.
3 That's only natural in a case like this for that to be done.
4 You know, it's a little much perhaps to accuse you of being a
5 lynch mob or to being Army soldiers that are going to go out
6 there and kill someone in some cold-hearted fashion, to
7 equate you in a sense with being the same type of
8 cold-blooded murderer that Jedidiah Isaac Murphy is, because
9 you're not. Let's make one thing very clear this morning.
10 We're not at this point because of something that we've done.
11 We're not at a point where we have to make a decision like
12 this because of something that you've done. We're here
13 because of Jedidiah Murphy, the way he's lived his life, and
14 the outright evil choices that this man has made throughout
15 his life. Make no mistake about it. That's why we're here
16 this morning. So none of you should feel any sort of guilt
17 at this point about what we're going to do in this particular
18 case and the decisions that you have to make at this stage.
19 Don't feel any guilt. It's not your responsibility that
20 you're here for that reason.

21 You know, the old adage goes that actions speak
22 louder than words. And no matter how hard you try to
23 humanize Jedidiah Isaac Murphy, his actions say all that you
24 need to know about what he's about now and what he's going to
25 be in the future. And let's look at some of those actions

1 for the next few minutes. You know, you have to start, I
2 would submit, with the murder of Bertie Cunningham. If you
3 look at how that came about. I mean, here's a man who made a
4 conscious decision again to bring a gun out of that home of
5 Tonya Thorp. I mean, there was a fair amount of planning to
6 this thing because you see, he made a conscious decision,
7 didn't he, that he would pick out one of the most vulnerable
8 and helpless victims imaginable, an 80-year-old woman whose
9 defenses are totally down. She's in her neighborhood at 3:00
10 p.m., and yet this man right here chose to pick out Bertie
11 Cunningham to violate and to kill that day. I mean, those
12 are the facts that you're dealing with in this type of crime.
13 You know, that crime was violent beyond belief. A gun put up
14 to that poor woman's head and at a contact range a bullet put
15 into her brain.

16 And what did he show us about how much dignity he
17 felt about Ms. Cunningham then before he had 12 jurors
18 impaneled to decide his fate? You know, close the trunk on
19 her like she's a sack of cement or garbage and toted her
20 around town.

21 Now, Ms. Little says he reacted the way he always
22 does, that he went out there and started drinking. You know
23 from the evidence in this case that's not how he reacted to
24 the death of Bertie Cunningham. The Garland police have
25 never received an explanation. These doctors up here have

1 never received an explanation about why his very first action
2 while that poor woman lie dying in that trunk was to go up to
3 an ATM machine and start trying to rifle through her checking
4 account to get her money. Or why he went down to Harry Hines
5 and did the very same thing. You know, if you want again a
6 reminder of what his mind-set is before you 12 people are
7 impaneled, before he's captured and he's told about a
8 possible death penalty, all you have to do is look at that
9 tape from Chacho's in Terrell because again, his actions
10 speak louder than any words that could be spoken in this
11 court. They really do truly tell you all you need to know.

12 And as far as this man being cooperative and helpful
13 with the Garland Police Department, you know, again, never an
14 explanation for what he was really doing. This statement
15 that he never was afraid to just, you know, let it open, use
16 his name. That's not true either. If you look at some of
17 those other credit card receipts, you'll see that once he
18 buys those Go-Peds, he goes into the mode and very often he's
19 signing Cunningham to the receipts. You know, why is he so
20 careless? You know, that's up to you to decide. But you
21 have to know this, that in this man's mind, you know, when he
22 signs that statement and he says this was an accident, why
23 should you have any regard for what you've done earlier
24 because you see, if he can get one jury in Dallas County to
25 buy that excuse, he walks smooth out of this courthouse,

1 smooth out, not guilty, accident, forget it, and he's free
2 again, isn't he? You know, they say today, no excuses.
3 That's quite a change, isn't it, from a couple of weeks ago?
4 It's kind of like getting to the middle of that stream and
5 that horse that you're riding just ain't going to make it
6 across that creek, is it? And so you've got to jump on
7 another one. And now you say there are no excuses what he
8 did to Ms. Cunningham. Yet, when he was first there in the
9 Garland Police Department and he had an opportunity to tell
10 his side of the story, what does he do? He gives a legal
11 excuse that would walk him out of this courthouse. That's
12 his true mind-set. It really is. And, you know, if you look
13 at his cold remorseless way of doing things, I think we can
14 agree, can't we, that this guy's got one of the most
15 inconvenient or most convenient lapses of memory that you'll
16 ever see, doesn't he? To the point where he's trying to sell
17 the story to his doctors that, by golly, you know, he doesn't
18 remember anything from Bleachers until he just happened to
19 wake up in that car and poor Ms. Cunningham is sitting next
20 to him. And, you know, matter of fact, Doctor, my victim,
21 the one that I killed, I mean, she's the one that pointed the
22 gun out to me and said, hey, look over here, Jimbo, it's in
23 the console. Now, again, you're free to believe that if you
24 want to, but it makes absolutely no sense. And I would
25 submit to you that his memory lapses are very convenient and

1 they're very deliberate. Just like Matt Myers told you
2 yesterday, there's things this man knows, he ain't telling.
3 And that's by his choice.

4 Now, you know, I guess having lived in this county
5 all my life, I guess you just have to say it's a sad
6 commentary to where we've gotten to, isn't it? It really
7 is. I guess there are places that common sense would tell
8 you may not be safe to you, places and times where maybe
9 you're not free to do what you want to do, but, by golly,
10 have we gotten to the point in this county where an
11 80-year-old woman isn't free to go run an errand for a sister
12 who can't and to get back to her home safely, without a
13 predatory individual like Jedidiah Murphy capturing her and
14 murdering in broad daylight? Have we really gotten that far?
15 I guess we have. And that indeed is very, very sad. It's a
16 very sad commentary about this county. But it's sad and it's
17 a result of individuals just like this man right down here.
18 Nothing that we've done. Everything that he's done.

19 You know, when we look at his resume, as Ms. Miller
20 said, I think what this tells you is several things, but
21 primarily what it says is this, that this man has lived his
22 life in such a way that he's put you on notice. He's put you
23 on notice that he will not abide by the same rules that you
24 and I abide by. No matter whether they're relatively minor
25 or major, he has no respect for human life, for the rights of

1 others. That's the kind of individual that we're talking
2 about right here. We're talking about the kind of man who
3 with Ms. Cunningham will act as a Judge, jury, and
4 executioner of a totally innocent individual and then come in
5 here through his attorneys and ask for mercy. That's the
6 kind of person that we're talking about, aren't we, in
7 Jedidiah Isaac Murphy here?

8 You know, I've got to stand here on behalf of the
9 State of Texas, and I've got to tell you that we've made
10 mistakes in our dealings with Jedidiah Isaac Murphy, haven't
11 we? You see, when he came into the courts of Van Zandt
12 County, we made a very serious mistake. He told us, the
13 State of Texas, what he was willing to take, and we gave it
14 to him. We underestimated him as an individual. We
15 underestimated his threat to the community. We took him at
16 his word, and we said we'll give you the minimum here. We'll
17 put you on probation. As a matter of fact, we'll put you on
18 two probations and we'll leave you free to basically do as
19 you please. And I'm very sad to tell you up here in Dallas
20 County, in this very same court, we made another horrible
21 mistake because we looked Jedidiah Isaac Murphy right in the
22 eyes and we said to him, tell us what you want. He gave us
23 his order, and then you know what, we filled his order and we
24 gave him what he wanted and we underestimated him again.
25 That's our mistake, and I'm sad to say we've got to take some

1 responsibility for it.

2 You know, and as we dealt with him on other charges
3 of marijuana and DWLS and other things, again, we gave him
4 what he wanted to get out of this system. Those were
5 mistakes that we made unfortunately. They turned out to be
6 very deadly mistakes and Bertie Cunningham paid with her
7 life, I'll submit, partly because of the mistakes the State
8 of Texas did. And our mistake was in believing in him,
9 trying to help him, and taking him at his word that he would
10 not be a future threat to society. And we were mistaken
11 about that. And now today, again through Ms. Little and Ms.
12 Balido, this man sits here and he -- basically he has put his
13 order in to you, and you've got a choice right now. There is
14 a true fork in the road that you've got to look at. You are
15 either going to give this man again what he wants, which is
16 the minimum of a life sentence, or you're going to do what's
17 right. That's your decision. Do we repeat the mistakes of
18 the past? Do we underestimate his future threats to society
19 again? Are we at this time, this date, finally said no
20 more? This is the end of the road. We're not going to
21 jeopardize society anymore because of what you've done.

22 You know, Special Issue Number 1, is he a future
23 threat to society. I'll submit to you the answer without
24 question is yes. The defense wants you to limit that word
25 "society" to prison only. Why? Because it's really the

1 only hope they have of having you good 12 people answer no to
2 Special Issue Number 1. But if you look at his behavior in
3 the Dallas County Jail even, you've really got to question
4 that, don't you? I mean, you've really got to question what
5 he's all about.

6 Here's a man who on two different occasions through
7 his own actions tries to get out to Parkland Hospital, a much
8 less secure facility than the Dallas County Jail.

9 MR. BYCK: Objection, Your Honor. Been no
10 evidence, arguing outside the record, speculation.

11 THE COURT: Sustained.

12 MR. BYCK: Ask the jury be instructed to
13 disregard.

14 THE COURT: Jury will disregard the last
15 comment by the prosecutor.

16 MR. BYCK: Respectfully move for a mistrial.

17 THE COURT: Denied.

18 MR. DAVIS: Tried to leave a highly secure
19 area of the Dallas County Jail to get to a hospital here in
20 this community.

21 How does he do it? Well, this suicide attempt --
22 again, you're free to draw whatever conclusions you want to.
23 It's curious though, isn't it? Here's a man who knows full
24 well how to kill. He's got no trouble with Bertie
25 Cunningham. But time and time again, even up there in the

1 Dallas County Jail, he just can't quite succeed at taking his
2 own life. And I'll submit to you that that attempt up there
3 in the Dallas County Jail was a ruse. It was a ruse again to
4 try to invoke sympathy on your part and to get out of the
5 highly secure area of the Dallas County Jail. It's the very
6 same effort he made with nurse Sanders, you know, where he
7 claimed to be unconscious and she came down there. She
8 observed him raising his head, looking about, again trying to
9 manipulate the environment for his own advantage, for his own
10 sympathetic purposes. And thank God she kept looking at him
11 and she found him out and he assaulted the personnel up
12 there. And those complaints that were so serious before that
13 he needed to leave that secure environment for, poof, they
14 disappear when Bill Parker leaves the building. And they're
15 never heard of again. I mean, you've really got to question.
16 This guy is smart. We know that. He's a problem solver if
17 ever there was one, according to his records. He figures the
18 system out.

19 You know, all you have to do if you really have a
20 question about what this guy's going to do in prison, if you
21 look at the defense's own expert -- now, these are not people
22 that the State of Texas hired on his behalf, but you look at
23 Dr. James Butcher who the defense hired and this report was
24 brought out on cross-examination. And you remember what Dr.
25 Butcher said? You know, he's the doctor, I suppose, who's

1 not opposed to the death penalty. Here is what he says about
2 the defendant. He says this man right here is a poor
3 candidate for psychotherapy. Individuals with his profile
4 are not very amenable to changing their behavior. You have a
5 litany illustrating his behavior. He goes on to say this,
6 they tend to be quite aggressive. And finally, if you have
7 any question about what this man is all about in a confined
8 setting, adjustment to prison appears to be difficult for
9 them. Those aren't my words, ladies and gentlemen. That's
10 not some expert that we hired. That's Dr. James Butcher
11 hired by the defense to look at the tests administered to
12 this man over here. So even if I look at that set alone,
13 which each and every one of you told us you weren't going to
14 do, but even if you do that, I mean, their own expert says,
15 that ain't going to fly in this case. This man is going to
16 be a danger wherever he's going to be. And if you look at
17 the community as a whole and each and every one of you
18 pledged to us that you would in this case. Even Dr. Kessner
19 and Dr. Crowder who came in here, had to tell you that they
20 are not happy with the death penalty in the State of Texas
21 and have serious problems with it. When I asked each and
22 every one of them, I said, Dr. Crowder, Dr. Kessner, do you
23 have an opinion about whether this man is going to be a
24 threat in this community.

25 Yes, I do.

1 What is that opinion?

2 Yes, he will be a future threat and danger in the
3 community as a whole. Again, those are not people that I
4 hired. Those are people that came right from this table over
5 here and at least they were honest enough to come in here and
6 tell you, future danger in the community, no question about
7 it. That's their opinion.

8 When you look now at Question Number 2 briefly,
9 mitigation -- mitigating circumstance. I'll submit to you
10 this. While things are not always black and white, I think
11 we have a pretty clear picture, don't we, about what's
12 happening here? What we have really here, we've got a
13 lifetime of excuses, a lifetime of blaming, a lifetime of
14 trying to shift the responsibility to other people.

15 Now, I'm not saying that he grew up to age 5 in a
16 wonderful home. I mean, there's no question, that was a bad
17 home to have to grow up in. No question about it.

18 Now, many of his father's actions that you heard
19 about, occurred before this man is even born. But he had to
20 see some things that none of us would want to have to see.
21 But the evidence, I submit to you, from age 5 on, for the
22 last 20 years this man hadn't even witnessed abuse of any
23 form. He's never ever been the victim of abuse the evidence
24 shows, never. Even in his father's home there's no evidence
25 that this man ever was the victim of abuse at his father's

1 hands. He may have seen it --

2 MS. LITTLE: I'll object to that as a
3 misstatement of the evidence.

4 THE COURT: Province of the jury to recall the
5 testimony as they heard it.

6 MR. DAVIS: You know, and Ms. Little, you
7 know, wrote this down. She talked about trying to dehumanize
8 individuals. You know, some plot on our part to dehumanize
9 the defendant. I'll tell you what's dehumanizing. That's
10 what you had to hear about poor Terry Tolar. You talk about
11 a vicious slanderous smear campaign launched against a good,
12 honest hard-working man. This Terry Tolar, he wasn't going
13 out looking for kids. He and his wife had to pray about
14 that. Even though they had three more in the home, they
15 decided to take this boy and his brother, even with his
16 problems, and tried to help them. No abuse ever was meted
17 out against this person at the hands of either Terry or
18 Celeste Tolar. You know, and if you've got any doubt about
19 that, again, I suggest that you look at the records. Those
20 records that were generated on January the 5th of 1987, by
21 Dr. Richard Ingram. And he very clearly says with regard to
22 this person down here, no evidence of psychological or
23 physical or sexual abuse. None whatsoever. Because it just
24 didn't happen. Those are the facts and the reality here.

25 What other possible mitigating circumstances?

1 Well, we know he's not retarded. We know by all the tests
2 done this is an above average, smart guy, good problem
3 solver. He's got absolutely no damage to his brain or
4 central nervous system. This isn't somebody who's been the
5 victim of nature here. None whatsoever, the doctors say,
6 after testing. We know, you know, again smart. He's
7 capable, but a man who's made terrible decisions. The
8 decision to pick up that bottle, to pick up the needles, to
9 pick up the pills, again, are all decisions made by this
10 individual right over here with very serious consequences.
11 Again, voluntary decisions, every single one of them. And
12 I'd submit to you that this person has been blessed in his
13 life with people who have hung with him and stuck with him
14 through thick and thin. I mean, family members, regardless
15 of his behavior, have always been available for him, haven't
16 they? His family out here, Randy Crow, all of these people,
17 you know, that regardless of what he did to them or to
18 others, came in here and told you there was never a time that
19 I didn't love this man. There was never a time that I turned
20 my back on this man. There was never a time if he said, hey,
21 I've got a problem, I need your help, that I wouldn't have
22 done everything necessary to help you. I mean, that's the
23 reality here. We've got a person unfortunately who has made
24 countless evil choices in his life. And no matter how good a
25 boy he may have been early on, the sad fact is people

1 sometimes change. Sometimes they change for the better, and
2 sometimes they don't. And we've got one here today who's
3 made some decisions that have taken him down a very horrible
4 dark road.

5 THE COURT: Two minutes remain, Counsel.

6 MR. DAVIS: Let me talk to you briefly about
7 Sherryl Wilhelm and the kidnapping that occurred. You know,
8 you don't just have to take the eyewitness account of Ms.
9 Wilhelm where she's with this man for several minutes.
10 You've got Randy Crow, don't you? Now, this is one of the
11 defendant's closest confidants, friends, and supporters that
12 he's ever had in his life. You remember when I asked Randy
13 Crow, did you discuss that kidnapping case over in
14 Arlington? He said, yes, I did. We looked at some
15 paperwork. I said, what exactly did the defendant tell you?
16 You remember what Randy Crow said because it's very, very
17 important here. He said to all of us, he said, this man down
18 here, he didn't deny it. What he said was, you know, Randy,
19 I just don't remember if I kidnapped that woman or not.
20 That's exactly what Randy Crow came in here to this
21 courthouse and told you and that is the truth. That's
22 exactly what this man said.

23 You know, again it's only natural to focus on him.
24 But, you know, Bertie Cunningham over here, this good and
25 saintly woman over here, you know, there was a time not so

1 long ago when she was still ours, wasn't she? She was ours.
2 She was our neighbor, our helper. She was our sister. She
3 was our grandmother. She was our mother. Even more than
4 that, she was an example to all of us, I submit to you, on
5 how you live your life with dignity and grace. She is no
6 longer with us because an individual back on October the 4th
7 of the year 2000, made a conscious decision to take her from
8 us and he had absolutely no right to do that at all for his
9 own greedy purposes, but he did it, didn't he?

10 We're coming to the end here. You know, it started
11 a long time ago. It's kind of like a marathon race in a way.
12 Van Zandt County Sheriff's Department, members of the Garland
13 Police Department, they picked up that torch of truth a long
14 time ago, and they ran with it as long as they were allowed,
15 and then they handed that torch to Ms. Miller and myself.
16 And I can honestly tell you we've done everything we can do
17 to try to illuminate the truth for you. We can't cross the
18 line. I mean, at this point I've got to hand that torch over
19 to you. You 12 people are the only ones who are allowed to
20 cross the line and to find the true verdict in this case. So
21 now on behalf of Ms. Cunningham's family and their lives that
22 have been shattered forever and on behalf of this voice who
23 has been silenced forever, I'm going to use my voice and I'm
24 going to ask you to keep the commitment that you made to Ms.
25 Miller and myself, to render a true verdict in this case, to

1 do true justice, to follow the law and the evidence. True
2 verdict in this case is this, Special Issue Number 1 yes.
3 Answer to Special Issue Number 2 no. And each and every one
4 of you made the solemn commitment to us, regardless of the
5 consequences, if the evidence told you those were the
6 answers, that you could and you would return those answers,
7 and I'm going to ask you to keep your commitments to us at
8 this time, to render that true verdict in this case.

9 I want to thank you for your service here, and God
10 be with all of you.

11 THE COURT: Sheriff, if you'd retire the jury.

12 Ladies and gentlemen, you begin your deliberations
13 and when lunch has arrived, we'll take a lunch break.

14 (Jury excused from courtroom.)

15 THE COURT: Visitors may be excused or seated
16 as you wish.

17 (Recess for deliberations at 11:19 a.m.)

18 THE COURT: If there's anybody in the
19 courtroom who feels regardless of the jury's answers, they
20 cannot control their emotions, and I realize that may be the
21 case, I would invite you to consider excusing yourself from
22 the courtroom at this time. I do not wish my comment in any
23 way, shape, or form to be interpreted by any of you as my
24 desire that any of you excuse yourself from the courtroom,
25 but this is, I understand and appreciate, has been an

1 emotional experience for all of us. And I can understand if
2 anybody wishes to excuse themselves, they are invited to do
3 so.

4 It's my understanding the defense wishes the jury to
5 be polled individually; am I correct?

6 MS. LITTLE: That's right.

7 THE COURT: Sheriff, may we have the jury,
8 please.

9 THE BAILIFF: All rise.

10 (Jury returned to the courtroom.)

11 THE COURT: Ms. Briscoe, members of the jury,
12 you may be seated.

13 Mr. Murphy, counsel, visitors in the gallery, you
14 may be seated as well.

15 (Jury Verdict in Punishment)

16 THE COURT: Cause Number F00-02424-M, styled
17 the State of Texas versus Jedidiah Isaac Murphy, verdict
18 reads as follows:

19 Answer to Special Issue Number 1: We, the jury,
20 unanimously find and determine beyond a reasonable doubt that
21 the answer to this special issue is yes. Signed Nichole
22 Marie Briscoe, presiding juror.

23 Answer to Special Issue Number 2: We, the jury,
24 unanimously find that the answer to this special issue is
25 no. Signed Nichole Marie Briscoe, presiding juror.

1 Verdict of the jury reads as follows: We, the jury,
2 having answered the foregoing issues, return the same unto
3 the Court as our verdict. Again, signed Nichole Marie
4 Briscoe, presiding juror.

5 Ms. Briscoe, ladies and gentlemen of the jury, a
6 request has been made of the Court to poll you individually.
7 I will call you individually. I will ask the special issue
8 verbatim to you. Afterwards you will respond either yes or
9 no, according to your conscience.

10 (Jury Polled Individually)

11 THE COURT: Juror Number 1, Emilia Nisbet.
12 Ms. Nisbet, do you find from the evidence beyond a reasonable
13 doubt that there is a probability that the defendant would
14 commit criminal acts of violence that would constitute a
15 continuing threat to society?

16 JUROR: Yes, sir.

17 THE COURT: Ms. Nisbet, Special Issue Number
18 2: Do you find from the evidence, taking into consideration
19 all of the evidence, including the circumstances of the
20 offense, the defendant's character and background, and the
21 personal moral culpability of the defendant, that there is a
22 sufficient mitigating circumstance or circumstances to
23 warrant that a sentence of life imprisonment rather than
24 death be imposed?

25 Your answer?

1 JUROR: No, sir.

2 THE COURT: You may be seated.

3 Juror Number 2, Dorothy Jennings. Ms. Jennings,
4 Special Issue Number 1: Do you find from the evidence beyond
5 a reasonable doubt that there is a probability that the
6 defendant would commit criminal acts of violence that would
7 constitute a continuing threat to society?

8 JUROR: Yes.

9 THE COURT: Special Issue Number 2: Do you
10 find from the evidence, taking into consideration all of the
11 evidence, including the circumstances of the offense, the
12 defendant's character and background, and the personal moral
13 culpability of the defendant, that there is a sufficient
14 mitigating circumstance or circumstances to warrant that a
15 sentence of life imprisonment rather than a death sentence be
16 imposed?

17 JUROR: No.

18 THE COURT: You may be seated.

19 Juror Number 3, Kathy S. Hunter. Ms. Hunter,
20 Special Issue Number 1: Do you find from the evidence beyond
21 a reasonable doubt that there is a probability that the
22 defendant would commit criminal acts of violence that would
23 constitute a continuing threat to society?

24 JUROR: Yes.

25 THE COURT: Special Issue Number 2: Do you

1 find from the evidence, taking into consideration all of the
2 evidence, including the circumstances of the offense, the
3 defendant's character and background, and the personal moral
4 culpability of the defendant, that there is a sufficient
5 mitigating circumstance or circumstances to warrant that a
6 sentence of life imprisonment rather than a death sentence be
7 imposed?

8 JUROR: No.

9 THE COURT: You may be seated.

10 Presiding juror, Nichole Briscoe. Ms. Briscoe,
11 Special Issue Number 1: Do you find from the evidence beyond
12 a reasonable doubt that there is a probability that the
13 defendant would commit criminal acts of violence that would
14 constitute a continuing threat to society?

15 JUROR: Yes.

16 THE COURT: Special Issue Number 2: Do you
17 find from the evidence, taking into consideration all of the
18 evidence, including the circumstances of the offense, the
19 defendant's character and background, and the personal moral
20 culpability of the defendant, that there is a sufficient
21 mitigating circumstance or circumstances to warrant that a
22 sentence of life imprisonment rather than a death sentence be
23 imposed?

24 JUROR: No, sir.

25 THE COURT: Be seated.

1 Richard A. Bachmeyer. Mr. Bachmeyer, Special Issue
2 Number 1: Do you find from the evidence beyond a reasonable
3 doubt that there is a probability that the defendant would
4 commit criminal acts of violence that would constitute a
5 continuing threat to society?

6 JUROR: Yes.

7 THE COURT: Special Issue Number 2: Do you
8 find from the evidence, taking into consideration all of the
9 evidence, including the circumstances of the offense, the
10 defendant's character and background, and the personal moral
11 culpability of the defendant that there is a sufficient
12 mitigating circumstance or circumstances to warrant that a
13 sentence of life imprisonment rather than a death sentence be
14 imposed?

15 JUROR: No.

16 THE COURT: You may be seated.

17 Robert L. Mendro. Mr. Mendro, Special Issue Number
18 1: Do you find from the evidence beyond a reasonable doubt
19 that there is a probability that the defendant would commit
20 criminal acts of violence that would constitute a continuing
21 threat to society?

22 JUROR: Yes.

23 THE COURT: Special Issue Number 2: Do you
24 find from the evidence, taking into consideration all of the
25 evidence, including the circumstances of the offense, the

1 defendant's character and background, and the personal moral
2 culpability of the defendant, that there is a sufficient
3 mitigating circumstance or circumstances to warrant that a
4 sentence of life imprisonment rather than a death sentence be
5 imposed?

6 JUROR: No.

7 THE COURT: You may be seated.

8 Jo Ann Lawley. Ms. Lawley, Special Issue Number 1:
9 Do you find from the evidence beyond a reasonable doubt that
10 there is a probability that the defendant would commit
11 criminal acts of violence that would constitute a continuing
12 threat to society?

13 JUROR: Yes.

14 THE COURT: Special Issue Number 2: Do you
15 find from the evidence, taking into consideration all of the
16 evidence, including the circumstances of the offense, the
17 defendant's character and background, and the personal moral
18 culpability of the defendant, that there is a sufficient
19 mitigating circumstance or circumstances to warrant that a
20 sentence of life imprisonment rather than a death sentence be
21 imposed?

22 JUROR: No.

23 THE COURT: You may be seated.

24 Andre Garza. Mr. Garza, Special Issue Number 1:
25 Do you find from the evidence beyond a reasonable doubt that

1 there is a probability that the defendant would commit
2 criminal acts of violence that would constitute a continuing
3 threat to society?

4 JUROR: Yes.

5 THE COURT: Special Issue Number 2: Do you
6 find from the evidence, taking into consideration all of the
7 evidence, including the circumstances of the offense, the
8 defendant's character and background, and the personal moral
9 culpability of the defendant, that there is a sufficient
10 mitigating circumstance or circumstances to warrant that a
11 sentence of life imprisonment rather than a death sentence be
12 imposed?

13 JUROR: No.

14 THE COURT: You may be seated.

15 Marcus S. Rasco. Mr. Rasco, Special Issue Number
16 1: Do you find from the evidence beyond a reasonable doubt
17 that there is a probability that the defendant would commit
18 criminal acts of violence that would constitute a continuing
19 threat to society?

20 JUROR: Yes, sir.

21 THE COURT: Special Issue Number 2: Do you
22 find from the evidence, taking into consideration all of the
23 evidence, including the circumstances of the offense, the
24 defendant's character and background, and the personal moral
25 culpability of the defendant, that there is a sufficient

1 mitigating circumstance or circumstances to warrant that a
2 sentence of life imprisonment rather than a death sentence be
3 imposed?

4 JUROR: No, sir.

5 THE COURT: Be seated.

6 Mark T. Jones. Mr. Jones, Special Issue Number 1:
7 Do you find from the evidence beyond a reasonable doubt that
8 there is a probability that the defendant would commit
9 criminal acts of violence that would constitute a continuing
10 threat to society?

11 JUROR: Yes, sir.

12 THE COURT: Special Issue Number 2: Do you
13 find from the evidence, taking into consideration all of the
14 evidence, including the circumstances of the offense, the
15 defendant's character and background, the personal moral
16 culpability of the defendant, that there is a sufficient
17 mitigating circumstance or circumstances to warrant that a
18 sentence of life imprisonment rather than a death sentence be
19 imposed?

20 JUROR: No, sir.

21 THE COURT: You may be seated.

22 Mr. Henry Lee Turner. Mr. Turner, sir, Special
23 Issue Number 1: Do you find from the evidence beyond a
24 reasonable doubt that there is a probability that the
25 defendant would commit criminal acts of violence that would

1 constitute a continuing threat to society?

2 JUROR: Yes.

3 THE COURT: Special Issue Number 2: Do you
4 find from the evidence, taking into consideration all of the
5 evidence, including the circumstances of the offense, the
6 defendant's character and background, and the personal moral
7 culpability of the defendant, that there is a sufficient
8 mitigating circumstance or circumstances to warrant that a
9 sentence of life imprisonment rather than a death sentence be
10 imposed?

11 JUROR: No.

12 THE COURT: You may be seated.

13 Ms. Shannon Hinckley. Ms. Hinckley, Special Issue
14 Number 1: Do you find from the evidence beyond a reasonable
15 doubt that there is a probability that the defendant would
16 commit criminal acts of violence that would constitute a
17 continuing threat to society?

18 JUROR: Yes.

19 THE COURT: Special issue Number 2: Do you
20 find from the evidence, taking into consideration all of the
21 evidence, including the circumstances of the offense, the
22 defendant's character and background, and the personal moral
23 culpability of the defendant, that there is a sufficient
24 mitigating circumstance or circumstances to warrant that a
25 sentence of life imprisonment rather than a death sentence be

1 imposed?

2 JUROR: No.

3 THE COURT: You may be seated.

4 (Defendant Sentenced)

5 THE COURT: Jedidiah Isaac Murphy, may I ask
6 that you please rise.

7 Cause Number F00-02424-M, styled the State of Texas
8 versus Jedidiah Isaac Murphy, pursuant to the answers to the
9 special issues by this jury, Order, Judgment, and Decree of
10 the Court that you be taken by the Sheriff of Dallas County,
11 by him safely held until transferred to an authorized
12 receiving agent of the Institutional Division of the Texas
13 Department of Criminal Justice, Huntsville, Texas, death row,
14 where you shall await the outcome of the appeals. In the
15 meantime, you are imposed to a sentence of death. Remand you
16 to the bailiffs.

17 Ms. Briscoe, ladies and gentlemen, it's been a very
18 physically -- it's okay to cry. Draining time for all of
19 us. If any of you find it necessary after going through this
20 experience that you need some professional help, if you would
21 please feel free to contact me privately, I will see to it
22 that help is given to you, to cope with any emotional
23 problems that you may have at no cost to you. You may retire
24 back into the jury room.

25 If any of you desire to be escorted by the bailiffs,

1 that will be made available to you. The attorneys may want
2 to visit with you. You are allowed to, but you are not
3 required to. Likewise, representatives of the media are
4 here. You are free to talk with them if you wish, but you
5 are not required to. It's up to you. Thank you very much.
6 You-all are excused.

7 (Jury excused from courtroom.)
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Reporter's Certificate

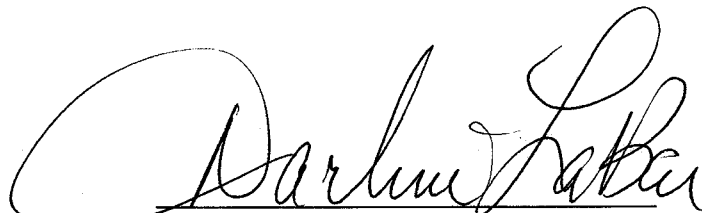
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 13th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

VOLUME 61 OF 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

EXHIBIT VOLUME

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 26th day of February, through the 30th day of
June, 2001, the following proceedings came on to be heard in
the above-entitled and numbered cause before the Honorable F.
Harold Entz, Jr., Judge presiding, held in Dallas, Dallas
County, Texas: Proceedings reported by machine shorthand,
computer assisted transcription.

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State's Exhibit Number PT1
Juror History - Cannon
(Copy attached)

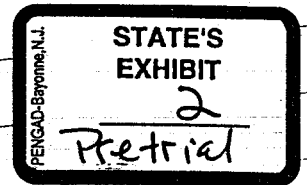
JUROR HISTORY SYSTEM
LINE SELECT SCREEN

LAST	FIRST	MI	CASE NUMBER(S)
CANNON	MARVIN	M	F98 68837
CANNON	MAXINE	L	F81 04489T
CANNON	MICHAEL	P	F97 52855
CANNON	MICHELE	C	F92 67353I
CANNON	NANCY	K	F99 929012
CANNON	OLGA PENA	R	M97 23888
CANNON	PATRICIA		F72 75595J
CANNON	PEGGY	J	186 35249L
CANNON	PEGGY JANE	P	M99 40043
CANNON	RAYMOND	W	178 02385H
CANNON	RICHARD		181 24272
CANNON	RITA	A	M97 21604J
CANNON	ROBERT	L	F79 050780
CANNON	ROBIN		F91 60036
CANNON	SANDRA	M	F93 42361R

PF3=EXIT PF8=PAGE FORWARD PF7=PAGE BACKWARD
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State's Exhibit Number PT2
Juror History - Biggerstaff
(Copy attached)



JUROR HISTORY SYSTEM
INQUIRY SCREEN

JUROR INFORMATION
DL # 00000000 DOB
LAST BIGGERSTAFF
FIRST ANDREA
STREET 00744KINGSWOOD
CITY RICHARDSON
JUROR (G-F-B) F
COMMENTS CONVERSION REC F

DEFENDANT INFORMATION
LAST AUBREY
FIRST OVERTURF MI A
DATE 04 25 84 CASE # 83 76117
CHARGE ASSAULT
O PLEA (G-N-O) N
ELIGIBLE FOR PROBATION (Y OR N)

R=J+J

TRIAL INFORMATION

VERDICT (G-N-H) G PRIOR CONVICTION SHOWN (Y OR N) Y

PUNISHED BY (JG OR JU) JG PUNISHMENT 30DAYS

PROSECUTORS LEAD LAST SHIPMAN FIRST

PICK LAST KUCERA FIRST

CASE (G-B-F) F

NEW LAST NAME OR PERFORM A TASK

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ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK
PF3=EXIT PF4=UPDT PF5=ADD

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State's Exhibit Number PT3

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Juror History - Mendro

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(Copy attached)

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NAME/MANDRU, ROBERT L. SEX/M. RAC/W. DOB/19450907.
 PUR/C
 REQ/INV WIMER. OPR/WIMER

JUROR HISTORY SYSTEM INQUIRY SCREEN

JUROR INFORMATION

DL # 00000000 DOB
 LAST MENDRO
 FIRST ROBERT
 STREET 08209MEADOW #2033
 CITY COPPEL

JUROR (G-F-B) B
 COMMENTS CONVERSION REC FROM OLD JURY HISTORY SYSTEM
 ROBERT FRANTZ
 R=J+J

DEFENDANT INFORMATION

LAST ROBERT
 FIRST FRANTZ MI D
 DATE 04 24 83 CASE # 182 68693J
 CHARGE RESISTING ARREST
 ZIP 75019 0000 PLEA (G-N-O) N
 ELIGIBLE FOR PROBATION (Y OR N) Y

TRIAL INFORMATION

VERDICT (G-N-H) N PRIOR CONVICTION SHOWN (Y OR N) N
 PUNISHED BY (JG OR JU) PUNISHMENT
 PROSECUTORS LEAD LAST FULLER FIRST
 PICK LAST MARSHALL FIRST

CASE (G-B-F) B

ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK
 PF3=EXIT PF4=UPDT PF5=ADD PF6=NEXT PF7=PREV

4XJ155

NAME MENDRO MARILYN
 NAME TYPE DF
 RACE -
 SEX -
 DOB -
 NUMBER TYPE -
 COURT -
 PENDING -

FIELD DESCRIPTION



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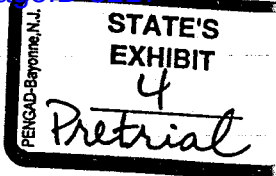
State's Exhibit Number PT4

Juror History - Brooks

(Copy attached)

BROOKSHIRE EDYE S F93 5877L
 BROOKSHIRE GAIL S M92 21618
 BROOKSHIRE GRACE F85 99740J

INVALID CURSOR POSITION. PLEASE RE-SELECT
 POSITION CURSOR ON LINE TO VIEW AND PRESS ENTER
 JUROR HISTORY SYSTEM
 INQUIRY SCREEN



JUROR INFORMATION

DL # 00949443 DOB 03 21 1952
 LAST BROOKS
 FIRST THOMAS MI
 STREET 4102 EDGEWOOD
 CITY GARLAND ZIP 75042
 JUROR (G-F-B) F
 COMMENTS

DEFENDANT INFORMATION

LAST RICHTER
 FIRST DAVID MI C
 DATE 10 25 94 CASE # M94 47087
 CHARGE DWI
 PLEA (G-N-O) N
 ELIGIBLE FOR PROBATION (Y OR N) Y

TRIAL INFORMATION

VERDICT (G-N-H) N PRIOR CONVICTION SHOWN (Y OR N) N
 PUNISHED BY (JG OR JU) JU PUNISHMENT NONE
 PROSECUTORS LEAD LAST WILLIAMS FIRST CHRISTIE
 PICK LAST WIRSKYE FIRST BILL
 CASE (G-B-F) B

ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK
 PF3=EXIT PF4=UPDT PF5=ADD PF8=NEXT PF7=PREV

4XJI56 NAME ENTERED BROOKS LINDA J

NAME TYPE DF

N	ARC	RS	DOB	CASE/BOND	CT	CHARGE	DISP
1	A	U	000000	MC8321644	MM	SPD	QUAS
2	A	UU	000000	MC91B4916	MD	ILLEG LN CHG	DISM
3	A	NF	122049	MC86C1965	MM	ART 6701H 1B	NFOG
4	A	WF	061751	MA8347917	MA	DWI	DISM
5	A	WF	061751	MA8357070	MA	PROST	NFOG

*** END OF RECORDS RETRIEVED ***

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4XJI55

NAME SANDERS LINDA
 NAME TYPE DF
 RACE _
 SEX _
 DOB 04 19 1940
 NUMBER TYPE _
 COURT _
 PENDING _

FIELD DESCRIPTION
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State's Exhibit Number PT5

Juror History - Rasco

(Copy attached)

DIST DATA CITY COUNCIL IR PLACE 00 SCH DIST IR PLACE 00 COLLEGE 05
WATER NAME 00 WATER NO FLOOD DIST 00
CONGRESS 30 SENATE 08 LEGIS 114 ST SCH DIST 12 JST/PEACE 2
FRAME NUMBERS

V O T E R H I S T O R Y B Y E L E C T I O N

CERT NO 01669463 NAME RABCO MARCUS STANLEY CURRENT PRCT 4016

EL	POL	ELEC	ELECTION NAME	VOTED	EL	POL	ELEC	ELECTION NAME	NOTE
ID	PTY	DATE		PRCT	ID	PTY	DATE		PRCT
AC	X	11-07 00	2000 GENERAL / PRE	4016P	64		11-08 94	GOVERNOR	446
AG	R	03-14 00	2000 PRIMARY REP/D	4016P	57	R	04-12 94	PRIMARY RUN OFF	446
AK	X	11-02 99	CONSTITUTIONAL AME	4016P	55	R	03-08 94	PRIMARY	446
38	X	02-06 99	CITY IRVING - SOND	4016P	52		11-02 93	CST; CHISD; REP-10	446
B4		11-03 96	GOVERNOR/CITY COF	4016P	45		06-05 93	RO2 = US SENATE	446
A4	R	03-10 96	PRIMARY	4016P	42		05-01 93	JNT=2,3,4,C,F,J,K	446
97	X	11-04 97	CONST AMND; DIED-4	4467P	38		11-03 92	PRESIDENTIAL	446
96		10-04 97	IRVING ISD - SOND	4467E	29	R	03-10 92	PRIMARY	446
95		08-09 97	CONST AMND; M; CDDPL	4467P	26		11-05 91	CONST/JNT=C,D	446
93	X	05-17 97	CITY OF IRVING	4467P	25		08-10 91	AMEND/ALL SCHOOL	446
92		05-03 97	JOINT 28 ENTRIES	4467P	18		11-06 90	GOVERNOR	446
89		11-08 96	PRESIDENTIAL	4467P	14	R	03-13 90	PRIMARY	446
85		08-10 96	JNT A,N,Y&CITY-IR	4467P	05		11-08 88	PRESIDENTIAL	446
80		05-04 96	JOINT 27 ENT.	4467P	01	R	03-08 88	PRIMARY	446
76	R	03-12 96	PRIMARY	4467P					
72	X	11-07 95	CONST AMENDMENTS	4467P					
69	X	05-06 95	JNT - F,T,S	4467P					

JUROR HISTORY SYSTEM
INQUIRY SCREEN

JUROR INFORMATION		DEFENDANT INFORMATION	
DL #	03054671 DOB 05 29 1951	LAST	DOMINGUEZ
LAST	RABCO	FIRST	JOSE MI
FIRST	MARCUS STANLEY MI	DATE	09 22 99 CASE # F99 46164
STREET	POST OFFICE BOX 153720	CHARGE	AGG KIDNAPPING
CITY	IRVING ZIP 75015	PLEA	(G-N-O) N
JUROR	(G-F-B) G	ELIGIBLE FOR PROBATION	(Y OR N) Y
COMMENTS	GOOD		

TRIAL INFORMATION

VERDICT (G-N-H) G PRIOR CONVICTION SHOWN (Y OR N) N
PUNISHED BY (JG OR JU) JU PUNISHMENT 18YRS 15, 15, TDC
PROSECUTORS LEAD LAST VELASCO FIRST K
PICK LAST BAILEY FIRST J
CASE (G-E-F) G

ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK
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State's Exhibit Number PT6

Juror History - Smits

(Copy attached)

Case 3:10-cv-00163-N Document 42-13 Filed 05/05/10 Page 309 of 546 PageID 8221

NAME SMITS GLORIA VIRGINIA WASSON
 RESIDENCE ADDR 00739 ORIOLE
 RESID CITY CO RESID ZIP 019
 MAIL ADDR 1 739 ORIOLE
 MAIL ADDR 2
 MAIL CITY COPPELL MAIL ST TX MAIL ZIP 75019
 BIRTH PLACE CITY COUNTY STATE/COUNTRY
 FORMER COUNTY 000 FORMER PRCT JURY
 TRANS CODE W TRANS DATE 12 08 97 CANCEL REASON OPID
 TRANS-1 CODE W TRANS-1 DATE 12 19 95 TRANS-2 CODE W TRANS-2 DATE 11 20 95

STATE'S EXHIBIT
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 Pretrial

DIST DATA CITY COUNCIL CO PLACE 00 SCH DIST CO PLACE 00 COLLEGE 02
 WATER NAME 00 WATER NO FLOOD DIST 00
 CONGRESS 26 SENATE 09 LEGIS 099 ST SCH DIST 12 JST/PEACE 2
 FRAME NUMBERS

V O T E R H I S T O R Y B Y E L E C T I O N

CERT NO 01328313 NAME SMITS GLORIA VIRGINI CURRENT PRCT 1306

EL ID	POL	ELEC DATE	ELECTION NAME	VOTED PRCT	EL ID	POL	ELEC DATE	ELECTION NAME	VOTE PRE
AJ	X	11-07 00	2000 GENERAL / PRE	1306P					
94		06-07 97	COPPELL, CK HILL	1370P					
89		11-05 96	PRESIDENTIAL	1370P					
38		11-03 92	PRESIDENTIAL	1235P					
26		11-05 91	CONST/JNT=C,D	1235P					
18		11-06 90	GOVERNOR	1235P					
14	D	03-13 90	PRIMARY	1235P					
05		11-08 88	PRESIDENTIAL	1235P					

JUROR HISTORY SYSTEM INQUIRY SCREEN

JUROR INFORMATION				DEFENDANT INFORMATION			
DL #	08906168	DOB	10 01 1942	LAST SKIPWORTH			
LAST	SMITS			FIRST FRED MI R			
FIRST	GLORIA	MI	V	DATE 08 25 97 CASE # M96 45054E			
STREET	739 ORIOLE			CHARGE DWI 2ND			
CITY	COPPELL	ZIP	75019	PLEA (G-N-D) N			
JUROR (G-F-B)	G			ELIGIBLE FOR PROBATION (Y OR N) Y			
COMMENTS	GOOD						

TRIAL INFORMATION

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 PROSECUTORS LEAD LAST MONTALVO FIRST DAN
 PICK LAST HYDE FIRST HEATH
 CASE (G-B-F) F

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State's Exhibit Number PT7
Juror History - Wilson
(Copy attached)



JUROR HISTORY SYSTEM
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JUROR INFORMATION

00000000 DOB

LAST WILSON

FIRST JOHN

STREET 02763BEECHMONT

CITY COPPEL

JUROR (G-F-B) F

COMMENTS CONVERSION REC FROM OLD JURY HISTORY SYSTEM

MARSHALL L WHEELER

R=J+J

DEFENDANT INFORMATION

LAST MARSHALL

FIRST L

MI W

DATE 07 30 82

CASE # F82-86583

CHARGE THEFT 200-1000

PLEA (G-N-O) N

ELIGIBLE FOR PROBATION (Y OR N) N

TRIAL INFORMATION

VERDICT (G-N-H) G

PRIOR CONVICTION SHOWN (Y OR N) Y

PUNISHED BY (JG OR JU) JG PUNISHMENT ESCAPED PRIOR SENTENCE

PROSECUTORS LEAD LAST EGGLESTON

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PICK LAST D

FIRST

CASE (G-B-F) F

ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK

PF3=EXIT PF4=UPDT PF5=ADD PF8=NEXT PF7=PREV

JUROR HISTORY SYSTEM

INQUIRY SCREEN

JUROR INFORMATION

DL # 08670461 DOB 02 02 1960

LAST WILSON

FIRST JOHN

STREET 9408 MILL HOLLOW

CITY DALLAS

JUROR (G-F-B) G

COMMENTS GOOD

DEFENDANT INFORMATION

LAST KITCHEN

FIRST JERRY

MI

DATE 01 12 98

CASE # F97 29194

CHARGE DEADLY CON HAB

PLEA (G-N-O) N

ELIGIBLE FOR PROBATION (Y OR N) Y

TRIAL INFORMATION

VERDICT (G-N-H) G

PRIOR CONVICTION SHOWN (Y OR N) N

PUNISHED BY (JG OR JU) JU PUNISHMENT 8TDC,PROB 4 SYRS \$7500 FINE

PROSECUTORS LEAD LAST MADOLE

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ENTER A NEW KEY, LAST NAME, OR PERFORM A TASK

PF3=EXIT PF4=UPDT PF5=ADD PF8=NEXT PF7=PREV

JUROR HISTORY SYSTEM

LINE SELECT SCREEN

LAST	FIRST	MI	CASE NUMBER(S)
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WILSON

JOHN

K F82 86583

WILSON

JOHN

K F97 29194

WILSON

JOHN

M 177 02464E

WILSON

JOHN

P F91 59563

WILSON

JOHN

P M95 43589

WILSON

JOHN

R M98 39605

WILSON

JOHN

T F79 09406N

WILSON

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T F79 09263Q

F82 90571

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State's Exhibit Number PT8

Juror History - Joyce

(Copy attached)

JUROR HISTORY SYSTEM
INQUIRY SCREEN

JUROR INFORMATION DEFENDANT INFORMATION

DL # 00000000 DOB LAST KENNETH

LAST WICKS FIRST R MI R

FIRST JOYCE MI DATE 08 16 84 CASE # F84 733781

STREET 007255E 2ND CHARGE MURDER/2D

CITY GRANDPRAIRIE ZIP 75050 0000 PLEA (G-N-O) N

JUROR (G-F-B) G ELIGIBLE FOR PROBATION (Y OR N) N

COMMENTS CONVERSION REC FROM OLD JURY HISTORY SYSTEM

KENNETH R RHODES

R=J+J

TRIAL INFORMATION

VERDICT (G-N-H) G PRIOR CONVICTION SHOWN (Y OR N) Y

PUNISHED BY (JG OR JU) JR PUNISHMENT LIFE

PROSECUTORS LEAD LAST MITCHELL FIRST

PICK LAST PHILLIPS FIRST

CASE (G-B-F) F

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PF3=EXIT PF4=UPDT PF5=ADD PF8=NEXT PF7=PREV

JUROR HISTORY SYSTEM

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LAST	FIRST	MI	CASE NUMBER(S)
WICKS	JOYCE		F84 733781
WICKS	JOYCE	E	F90 50023F
WICKS	KENNETH	R	174 04618E
WICKS	KIRBY	A	F94 03744V F95 76315
WICKS	RANDY	W	F00 46623
WICKS	WILLIAM	W	F86 91912J
WICKWARE	DANIEL	N	F76 03327J F76 04109J
WICKWIRE	DOUGLAS	E	82 80066
WIDDERS	WALLACE		F78 06205G
WIDDOES	HAZEL	L	F92 73668U
WIDENER	BETTY	L	F87 83061V
WIDENER	JAMES	F	F86 81472V F87 76516V
WIDKER	RONALD	W	81 05770M
WIDLER	MICHAEL	H	F78 02969H
WIDLUS	HANNAH	B	79 17039H

PF3=EXIT PF8=PAGE FORWARD PF7=PAGE BACKWARD

POSITION CURSOR ON LINE TO VIEW AND PRESS ENTER

RETURN 05/17/01 07.33.15

DDH#2L01DTL TDAX.

NO RECORD TOIC

QH-T, TX057015A

NAM/WICKS, JOYCE. SEX/F. RAC/W. DOB/19380129.

PUR/C

REQ/INV WIMER. DPR/WIMER

RETURN 05/17/01 07.33.24

DD 2L01DTL TDAX.

QH-T, TX057015A

NAM/JOHNSON, JOYCE. SEX/F. RAC/W. DOB/19380129.

PUR/C

REQ/INV WIMER. DPR/WIMER

TEXAS ID SUMMARY

TEXAS DEPARTMENT OF PUBLIC SAFETY COMPUTERIZED CRIMINAL HISTORY SUMMARY

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State's Exhibit Number 1
Photograph of Complainant
(Copy attached)



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State's Exhibit Number 2

Autopsy Photo

(Copy attached)



00-3564

PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

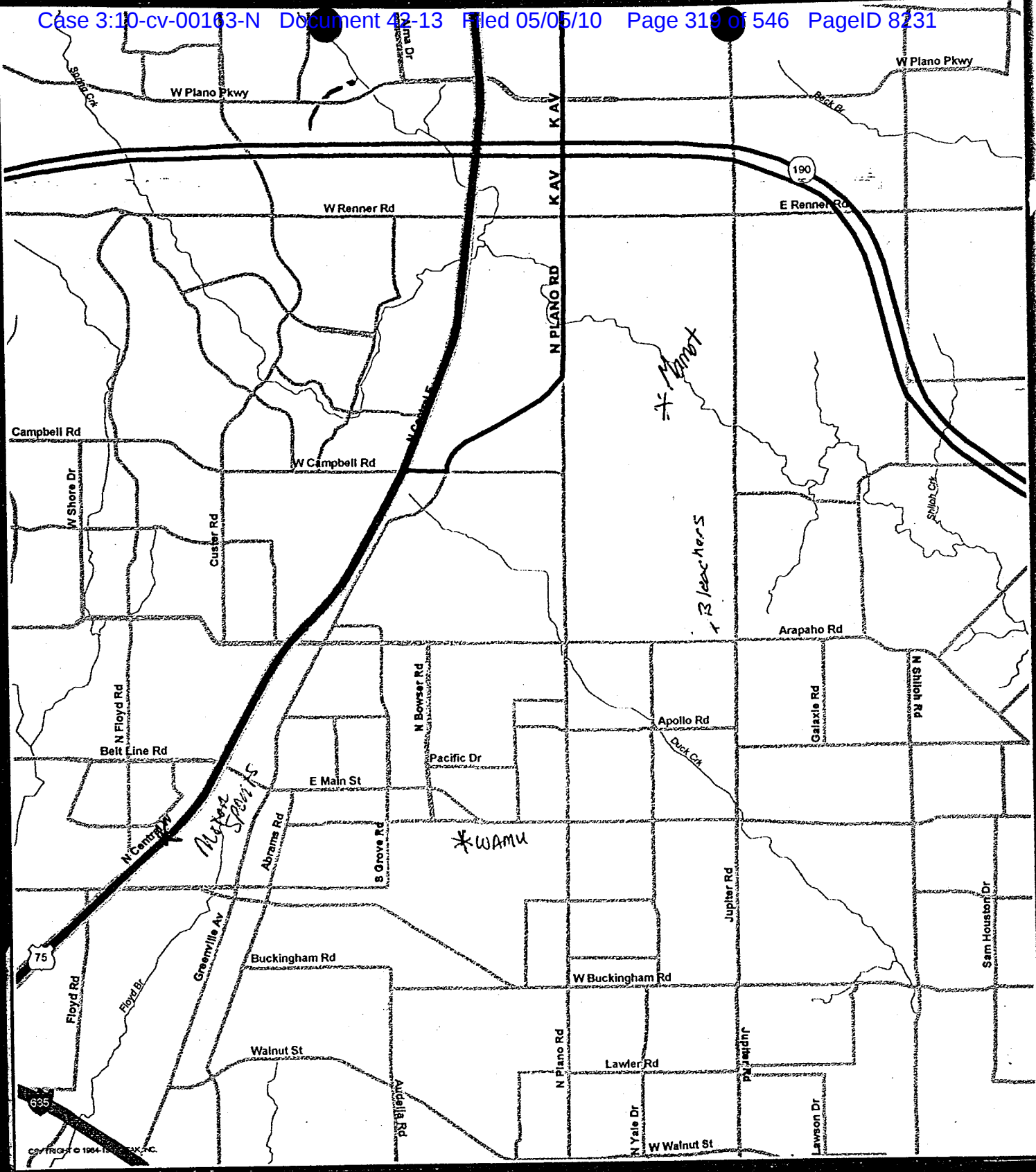
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State's Exhibit Number 3

Map of Garland

(Copy attached)



PENGAD-Bayonne, N.J.

STATE'S EXHIBIT

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State's Exhibit Number 4

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Frances Conner Discover Card

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(Copy attached)

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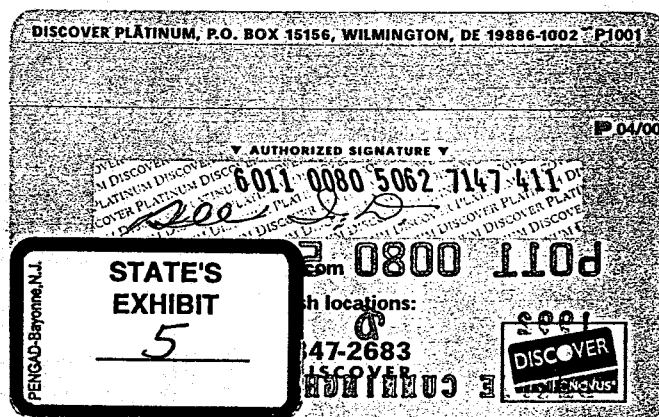
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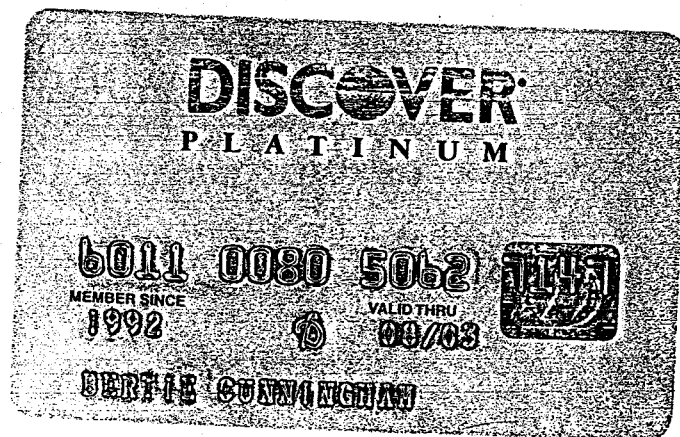
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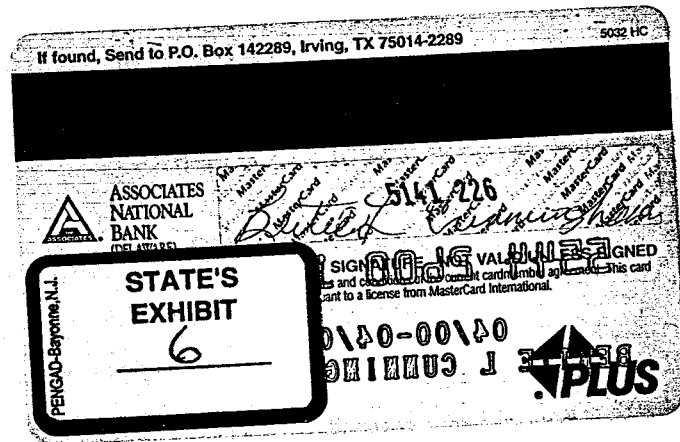
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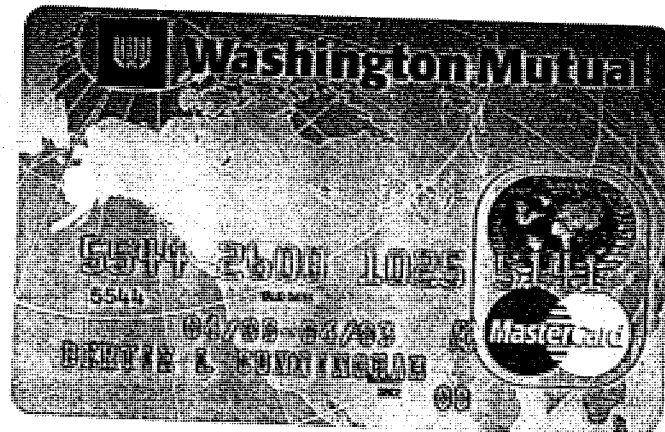




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State's Exhibit Number 6
Bertie Cunningham Master Card
(Copy attached)



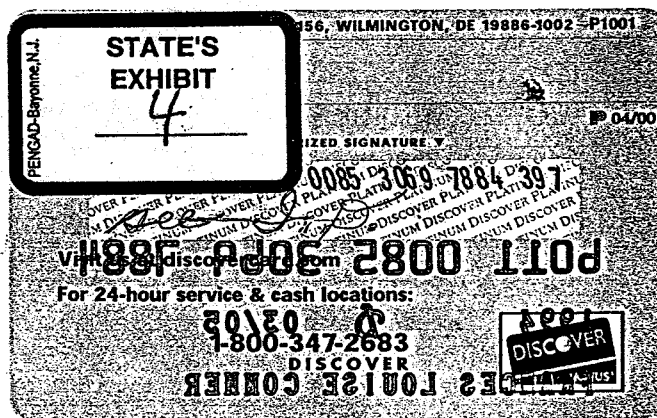


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State's Exhibit Number 7

Photograph of Honda

(Copy attached)





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State's Exhibit Number 5
Bertie Cunningham Discover Card
(Copy attached)



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State's Exhibit Number 8
Videotape at JCPenney
(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 10
Photograph
(Copy attached)



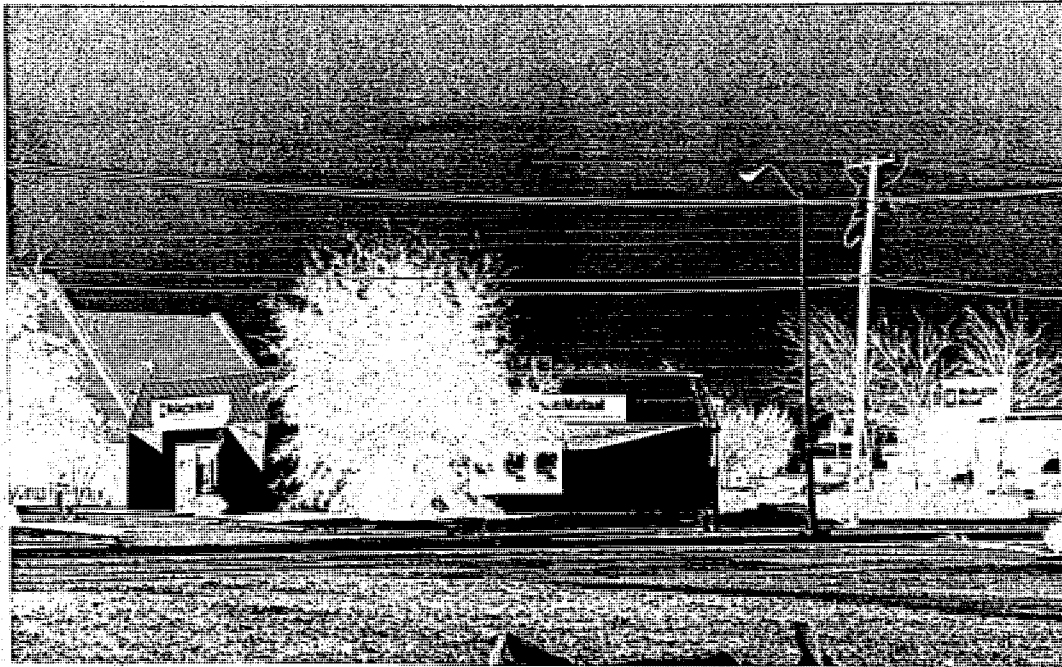
PENGAD-Bayonne, N.J.

STATE'S
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State's Exhibit Number 11
Photograph of Washington Mutual
(Copy attached)



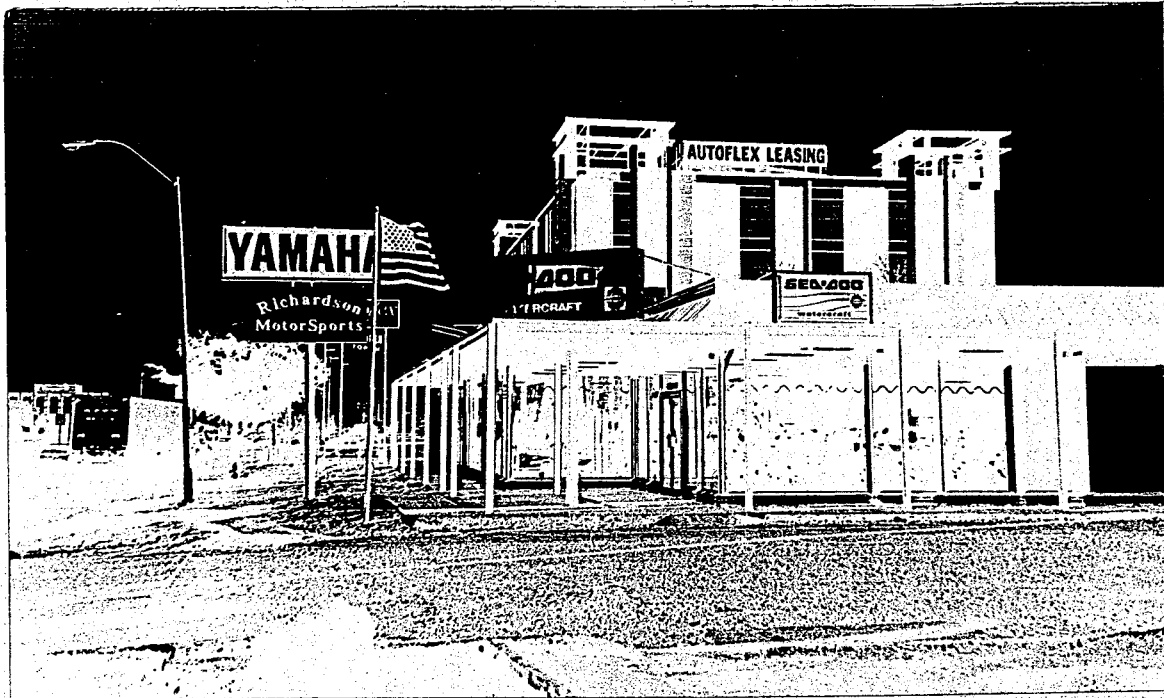
PENGAD-Bayonne, N.J.

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State's Exhibit Number 12
Photograph of Richardson Motor Sports
(Copy attached)



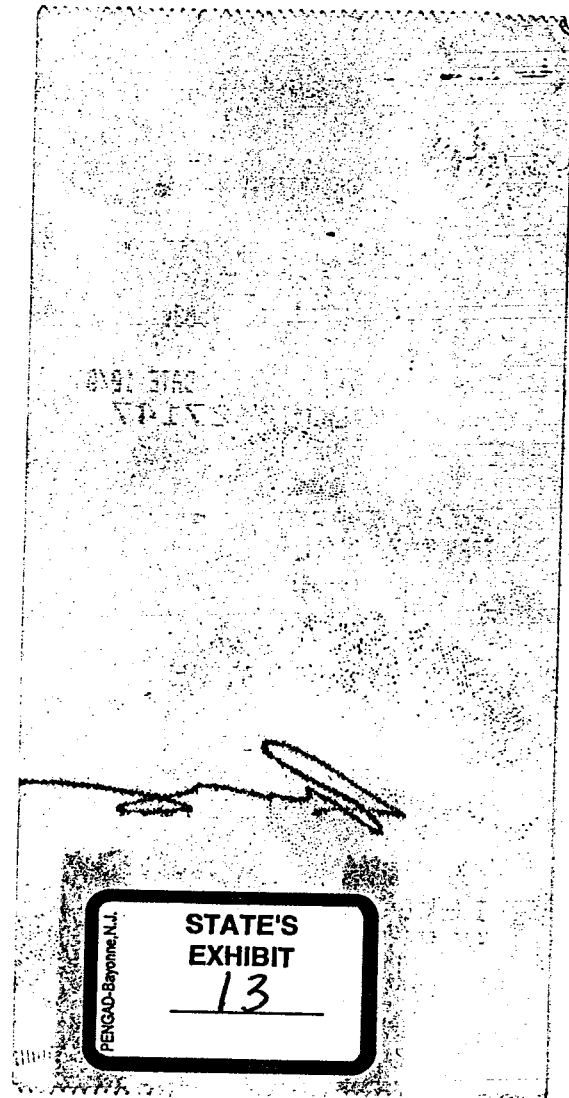
PENGAD-Bayonne, N.J.

STATE'S
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State's Exhibit Number 13
Receipt
(Copy attached)



451571404970

RICHARDSON MOTOR SERVICES
408 S CENTRAL EXPWY
RICHARDSON, TX 75080

TIME 05:49 PM DATE 10/04/09

6011008050627147

DATE 0308

SALE TYPE DS

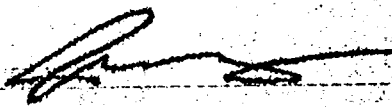
TERMINAL # 436035

TRAN TYPE SALE

REF CODE 004341

AC # 014

\$1728.75



TERRIE CUNNINGHAM

I AGREE TO PAY ABOVE TOTAL AMOUNT
ACCORDING TO CARD ISSUER AGREEMENT

THANK YOU
PLEASE COME AGAIN

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State's Exhibit Number 14A

Go-Ped Warranty

(Copy attached)

NOVATION
NOT
APPLICATION

CALIFORNIA

WE MAKE

TRANSPORTATION

FUN! TM

FUN ON A STICK™

Model Description

LIGHTNING

Serial No.

HB-25701

Patmont Motor Werks WARRANTY REGISTRATION: THIS WARRANTY REGISTRATION MUST BE COMPLETED BY THE SELLING DEALER AND SUBMITTED TO PATMONT MOTOR WERKS WITHIN 10 DAYS FROM DATE OF SALE FOR WARRANTY ENTITLEMENT. YOUR COPY OF THIS REGISTRATION IS YOUR PROOF OF WARRANTY ENTITLEMENT.

Dealer Number	Date Of Sale	Purchaser Name	Purchaser Phone
1177	10-4-00	STISAR MURRAY	972-492-8144
Address	City	State or province	Zip or postal code
1724 N EAST FRANKLIN	TERRELL	TX	78742

WARNING: Read and understand warnings and owners manual before operation. Serious injury or death can result from ignoring Warnings or improper use.

WHAT WE GUARANTEE AND WHAT YOU PROMISE US

Altered, defaced, or removed serial numbers or safety warning labels void this warranty.

Patmont Motor Werks, a Corporation (hereinafter referred to as P.M.W.) expressly warrants that each of its products is free from defects in material and workmanship under normal operating conditions and according to proper use for a period of 90 days from the date of original purchase.

Normal operating conditions require adequate fuel / oil ratio and / or routine care and maintenance by the purchaser of the product. Proper use means that the P.M.W. transportation product is to be used only in the manner intended for personal transportation of a single rider with proper safety equipment described on the 3D SAFETY WARNING LABEL affixed to the product. P.M.W. Transportation Products are intended for use only with the proper safety equipment on smoothly paved, safe, dry, non-oily surfaces in accordance with local regulations during daylight hours.

We express consideration for purchaser's execution of the limited warranty and liability agreement. P.M.W. will repair or replace any part or component, other than tires, of the P.M.W. transportation product free of charge to the original purchaser who registers his/her product under the warranty program. Warranty service can be obtained by calling your local dealer or the Tech. Line at (510) 373-7827 and following the instructions given by the service representative. Shipping costs will be at the purchaser's expense.

This warranty does not apply to tire wear, operation under abnormal conditions or damage to the vehicle brought on by improper use. Racing, competitive or commercial use, or modification of the product shall void this express limited warranty.

Purchaser herewith acknowledges: (a) P.M.W. assumes no liability for any mis-use of any of its transportation products; (b) Under this limited warranty and liability agreement P.M.W. shall have no obligation and the purchaser or user shall have no remedy against P.M.W., its officers, agents or assigns for any damages, including without limitation, incidental, consequential, special, punitive damages arising from direct or indirect injury to person or property, or any other loss, whether or not occasioned by negligence, or otherwise, on the part of P.M.W. (c) Purchaser acknowledges that there is an inherent risk in the operation of motorcycles, bicycles, mopeds, and all P.M.W. transportation products, and herewith assumes the risk of any injury arising from operation of any P.M.W. transportation product.

Original owner will indemnify and hold P.M.W. harmless and will take full responsibility for conveying all safety warnings, instructions, and limited warranty if it is sold, lent, or otherwise transferred to other persons and will indemnify P.M.W. from any claims against it for original owners' failure to do so.

THE EXPRESS LIMITED WARRANTY DESCRIBED ABOVE SHALL BE EXCLUSIVE AND THERE IS NO OTHER WARRANTY OR LIABILITY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE AND WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED HEREIN.

NOTICE: Some states do not allow the exclusion or limitation of incidental or consequential damages and some states do not allow limitation on how long an applied warranty lasts, therefore, some of the above limitations may not apply to you.

PLEASE ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND EACH WARNING BY PLACING YOUR INITIALS IN EACH BOX.

- ☐ This device does not conform to federal motor vehicle safety standards and is not intended for operation on public streets, roads or highways.
- ☐ Safety helmet, goggles, gloves, elbow and knee pads, appropriate shoes, and bright clothing must be worn while operating this device to reduce potential of injury.
- ☐ Do not operate this device in traffic, wet, frozen, oily or unpaved surfaces. Avoid uneven surfaces, chuckholes, surface cracks, obstacles and night in conditions of darkness.
- ☐ Operator only, never carry passengers under any circumstances; doing so reduces stability and control, operator needs full use of entire riding surface.
- ☐ Pregnant persons should not use this product.
- ☐ Never use alcohol or drugs before or while operating this device. They slow reaction time and impair judgement.
- ☐ This product should not be used by minors without adult supervision.
- ☐ High speeds, jumps and trick maneuvers are dangerous and could result in loss of control and other accidents.
- ☐ When accelerating or climbing hills, you will need to lean forward, under braking conditions you will need to lean back, to keep wheels in contact with the ground.
- ☐ Never permit a guest to use this device unless the guest has read the owners manual and all labels.
- ☐ Engine shut off switch is available for rear wheel braking or use in the event of throttle failure or other emergency when engine shut off is desired.
- ☐ This product should not be used by persons unwilling or unable to take responsibility for their own actions.
- ☐ Read all additional warnings and instructions in owners' manual before operating this P.M.W. product.
- ☐ Modifications or alterations to manufacturers original product voids all warranties.

WE SETTLE ARGUMENTS BY ARBITRATION

ANY DISPUTES HEREUNDER WILL BE RESOLVED THROUGH BINDING ARBITRATION IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ACCORDING TO CALIFORNIA CODE OF CIVIL PROCEDURE, §1280 ET SEQUITUR. PURCHASER, BY SIGNING AGREES TO ARBITRATE ALL DISPUTES.

(Purchaser's Initials required)

NOTICE: BY SIGNING BELOW YOU ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND THAT YOU ARE GIVING UP ANY RIGHTS YOU MIGHT HAVE TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY SIGNING BELOW YOU GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION, YOU ARE AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

You should feel free to consult an attorney before signing this limited warranty and liability agreement.

I have read understood and agreed to be bound by the limited warranty and liability agreement above and agree to submit disputes arising out of matters included in the arbitration of disputes provision to neutral arbitration.

Signature (required)

Date

10-4-00

Signature of parent or guardian if user is under the age of majority

Patmont Products Require Personal Responsibility

IT DOESN'T SAY
GO-PED
IT'S NOT A GO-PED®

www.goped.com

MAIL TO:
PMW
P.O. BOX 97
PLEASANTON, CA 94588

Go-Ped® is a registered

STATE'S
EXHIBIT

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State's Exhibit Number 14B

Go-Ped Warranty

(Copy attached)

INNOVATION
NOT
DUPLICATION

CALIFORNIA

WE MAKE

Case 3:10-cv-00166-N Document 42-13 Filed 05/05/10 Page 244 of 546 PageID 8256

GO-PED[®]

FUN ON A STICK[™]

Model Description	Serial No.
SP-1	T-39669

PATMONT MOTOR WORKS WARRANTY REGISTRATION: THIS WARRANTY REGISTRATION MUST BE COMPLETED BY THE SELLING DEALER AND SUBMITTED TO PATMONT MOTOR WORKS WITHIN 10 DAYS FROM DATE OF SALE FOR WARRANTY ENTITLEMENT. YOUR COPY OF THIS REGISTRATION IS YOUR PROOF OF WARRANTY ENTITLEMENT.

Dealer Number	Date of Sale	Purchaser's Name	Purchaser's Phone
727	10/4/09	ISAAC MURPHY	972-418-7125
Address	City	State or Province	Zip or Postal Code
227 E. EAST COAST TOWER	TERRELL	TX	75143

WARNING: Read and understand warnings and owners manual before operation. Serious injury or death can result from ignoring Warnings or improper use.

WHAT WE GUARANTEE AND WHAT YOU PROMISE US

Altered, defaced, or removed serial numbers or safety warning labels void this warranty.

Patmont Motor Works, a Corporation (hereinafter referred to as P.M.W.) expressly warrants that each of its products is free from defects in material and workmanship under normal operating conditions and according to proper use for a period of 90 days from the date of original purchase.

Normal operating conditions require adequate fuel / oil ratio and / or routine care and maintenance by the purchaser of the product. Proper use means that the P.M.W. transportation product is to be used only in the manner intended for personal transportation of a single rider with proper safety equipment described on the RED SAFETY WARNING LABEL affixed to the product. P.M.W. Transportation Products are intended for use only with the proper safety equipment on smoothly paved, safe, dry, non-oily surfaces in accordance with local regulations during daylight hours.

In express consideration for purchaser's execution of the limited warranty and liability agreement, P.M.W. will repair or replace any part or component, other than tires, of the P.M.W. transportation product free of charge to the original purchaser who registers his/her product under the warranty program. Warranty service can be obtained by calling your local dealer or the Tech. Line at (510) 373-7827 and following the instructions given by the service representative. Shipping costs will be at the purchaser's expense.

This warranty does not apply to tire wear, operation under abnormal conditions or damage to the vehicle brought on by improper use. Racing, competitive or commercial use, or modification of the product shall void this express limited warranty.

Purchaser, herewith acknowledges: (a) P.M.W. assumes no liability for any mis-use of any of its transportation products. (b) Under this limited warranty and liability agreement P.M.W. shall have no obligation and the purchaser or user shall have no remedy against P.M.W., its officers, agents or assigns for any damages, including without limitation, incidental, consequential, special, punitive damages arising from direct or indirect injury to person or property, or any other loss, whether or not occasioned by negligence, or otherwise, on the part of P.M.W. (c) Purchaser acknowledges that there is an inherent risk in the operation of motorcycles, bicycles, mopeds, and all P.M.W. transportation products, and herewith assumes the risk of any injury arising from operation of any P.M.W. transportation product.

Original owner will indemnify and hold P.M.W. harmless and will take full responsibility for conveying all safety warnings, instructions, and limited warranty if unit is sold, lent, or otherwise transferred to other persons and will indemnify P.M.W. from any claims against it for original owners' failure to do so.

THE EXPRESS LIMITED WARRANTY DESCRIBED ABOVE SHALL BE EXCLUSIVE AND THERE IS NO OTHER WARRANTY OR LIABILITY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE AND WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED HEREIN.

NOTICE: Some states do not allow the exclusion or limitation of incidental or consequential damages and some states do not allow limitation on how long an implied warranty lasts, therefore, some of the above limitations may not apply to you.

PLEASE ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND EACH WARNING BY PLACING YOUR INITIALS IN EACH BOX.

- ☐ This device does not conform to federal motor vehicle safety standards and is not intended for operation on public streets, roads or highways.
- ☐ Safety helmet, goggles, gloves, elbow and knee pads, appropriate shoes, and bright clothing must be worn while operating this device to reduce potential of injury.
- ☐ Do not operate this device in traffic, wet, frozen, oily or unpaved surfaces. Avoid uneven surfaces, chuckholes, surface cracks, obstacles and night in conditions of darkness.
- ☐ Operator only, never carry passengers under any circumstances; doing so reduces stability and control, operator needs full use of entire riding surface.
- ☐ Pregnant persons should not use this product.
- ☐ Never use alcohol or drugs before or while operating this device. They slow reaction time and impair judgement.
- ☐ This product should not be used by minors without adult supervision.
- ☐ High speeds, jumps and trick maneuvers are dangerous and could result in loss of control and other accidents.
- ☐ When accelerating or climbing hills, you will need to lean forward, under breaking conditions you will need to lean back, to keep wheels in contact with the ground.
- ☐ Never permit a guest to use this device unless the guest has read the owners manual and all labels.
- ☐ Engine shut off switch is available for rear wheel breaking or use in the event of throttle failure or other emergency when engine shut off is desired.
- ☐ This product should not be used by persons unwilling or unable to take responsibility for their own actions.
- ☐ Read all additional warnings and instructions in owners' manual before operating this P.M.W. product.
- ☐ Modifications or alterations to manufacturers original product voids all warranties.

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ANY DISPUTES HEREUNDER WILL BE RESOLVED THROUGH BINDING ARBITRATION IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ACCORDING TO CALIFORNIA CODE OF CIVIL PROCEDURE, §1280 ET SEQUITUR. PURCHASER, BY SIGNING AGREES TO ARBITRATE ALL DISPUTES.

(Purchaser's Initials required)

NOTICE: BY SIGNING BELOW YOU ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND THAT YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY SIGNING BELOW YOU GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

You should feel free to consult an attorney before signing this limited warranty and liability agreement.

I have read understood and agreed to be bound by the limited warranty and liability agreement above and agree to submit disputes arising out of matters included in the arbitration of disputes provision to neutral arbitration.

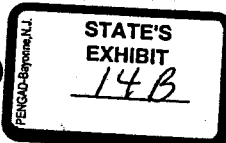
Signature (required)

Date 10-4-09

Signature of parent or guardian if user is under the age of majority

Patmont Products Require Personal Responsibility

IF IT DOESN'T SAY
GO-PED
IT'S NOT A GO-PED[®]



www.goped.com

© 1997 Patmont Motor Works All Rights Reserved

Go-Ped[®] is a registered trade mark of P.M.W.

MANUFACTURER'S COPY

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State's Exhibit Number 14C

Go-Ped Warranty

(Copy attached)

**INNOVATION
NOT
DUPLICATION**

CALIFORNIA

**WE MAKE
TRANSPORTATION
FUN!**

Case 3:10-cv-00163-N Document 42-13 Filed 05/05/10 Page 846 of 546

PageID 8258

GO-PED[®]
FUN ON A STICK[™]

Model Description START Serial No. 40965

PATMONT MOTOR WORKS WARRANTY REGISTRATION: THIS WARRANTY REGISTRATION MUST BE COMPLETED BY THE SELLING DEALER AND SUBMITTED TO PATMONT MOTOR WORKS WITHIN 10 DAYS FROM DATE OF SALE FOR WARRANTY ENTITLEMENT. YOUR COPY OF THIS REGISTRATION IS YOUR PROOF OF WARRANTY ENTITLEMENT.

Dealer Number	Date Of Sale	Purchaser's Name	Purchaser's Phone
1177	10/4/00	ST SAAC	MURPHY 772-1077
727	N	EAST COAST	75143

WARNING: Read and understand warnings and owners manual before operation. Serious injury or death can result from ignoring Warnings or improper use.

WHAT WE GUARANTEE AND WHAT YOU PROMISE US

Altered, defaced, or removed serial numbers or safety warning labels void this warranty.

Patmont Motor Werks, a Corporation (hereinafter referred to as P.M.W.) expressly warrants that each of its products is free from defects in material and workmanship under normal operating conditions and according to proper use for a period of 90 days from the date of original purchase.

Normal operating conditions require adequate fuel / oil ratio and / or routine care and maintenance by the purchaser of the product. Proper use means that the P.M.W. transportation product is to be used only in the manner intended for personal transportation of a single rider with proper safety equipment described on the RED SAFETY WARNING LABEL affixed to the product. P.M.W. Transportation Products are intended for use only with the proper safety equipment on smoothly paved, safe, dry, non-oily surfaces in accordance with local regulations during daylight hours.

In express consideration for purchaser's execution of the limited warranty and liability agreement, P.M.W. will repair or replace any part or component, other than tires, of the P.M.W. transportation product free of charge to the original purchaser who registers his/her product under the warranty program. Warranty service can be obtained by calling your local dealer or the Tech. Line at (510) 373-7827 and following the instructions given by the service representative. Shipping costs will be at the purchaser's expense.

This warranty does not apply to tire wear, operation under abnormal conditions or damage to the vehicle brought on by improper use. Racing, competitive or commercial use, or modification of the product shall void this express limited warranty.

Purchaser herewith acknowledges: (a) P.M.W. assumes no liability for any mis-use of any of its transportation products. (b) Under this limited warranty and liability agreement P.M.W. shall have no obligation and the purchaser or user shall have no remedy against P.M.W., its officers, agents or assigns for any damages, including without limitation, incidental, consequential, special, punitive damages arising from direct or indirect injury to person or property, or any other loss, whether or not occasioned by negligence, or otherwise, on the part of P.M.W. (c) Purchaser acknowledges that there is an inherent risk in the operation of motorcycles, bicycles, mopeds, and all P.M.W. transportation products, and herewith assumes the risk of any injury arising from operation of any P.M.W. transportation product.

Original owner will indemnify and hold P.M.W. harmless and will take full responsibility for conveying all safety warnings, instructions, and limited warranty if unit is sold, lent, or otherwise transferred to other persons and will indemnify P.M.W. from any claims against it for original owners' failure to do so.

THE EXPRESS LIMITED WARRANTY DESCRIBED ABOVE SHALL BE EXCLUSIVE AND THERE IS NO OTHER WARRANTY OR LIABILITY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE AND WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED HEREIN.

NOTICE: Some states do not allow the exclusion or limitation of incidental or consequential damages and some states do not allow limitation on how long an implied warranty lasts, therefore, some of the above limitations may not apply to you.

PLEASE ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND EACH WARNING BY PLACING YOUR INITIALS IN EACH BOX.

- ___ This device does not conform to federal motor vehicle safety standards and is not intended for operation on public streets, roads or highways.
- ___ Safety helmet, goggles, gloves, elbow and knee pads, appropriate shoes, and bright clothing must be worn while operating this device to reduce potential of injury.
- ___ Do not operate this device in traffic, wet, frozen, oily or unpaved surfaces. Avoid uneven surfaces, chuckholes, surface cracks, obstacles and night in conditions of darkness.
- ___ Operator only, never carry passengers under any circumstances; doing so reduces stability and control, operator needs full use of entire riding surface.
- ___ Pregnant persons should not use this product.
- ___ Never use alcohol or drugs before or while operating this device. They slow reaction time and impair judgement.
- ___ This product should not be used by minors without adult supervision.
- ___ High speeds, jumps and trick maneuvers are dangerous and could result in loss of control and other accidents.
- ___ When accelerating or climbing hills, you will need to lean forward, under breaking conditions you will need to lean back, to keep wheels in contact with the ground.
- ___ Never permit a guest to use this device unless the guest has read the owners manual and all labels.
- ___ Engine shut off switch is available for rear wheel braking or use in the event of throttle failure or other emergency when engine shut off is desired.
- ___ This product should not be used by persons unwilling or unable to take responsibility for their own actions.
- ___ Read all additional warnings and instructions in owners' manual before operating this P.M.W. product.
- ___ Modifications or alterations to manufacturers original product voids all warranties.

WE SETTLE ARGUMENTS BY ARBITRATION

ANY DISPUTES HEREUNDER WILL BE RESOLVED THROUGH BINDING ARBITRATION IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ACCORDING TO CALIFORNIA CODE OF CIVIL PROCEDURE, 81280 ET SEQUITUR. PURCHASER, BY SIGNING AGREES TO ARBITRATE ALL DISPUTES.

(Purchaser's Initials required)

NOTICE: BY SIGNING BELOW YOU ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND THAT YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY SIGNING BELOW YOU GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

You should feel free to consult an attorney before signing this limited warranty and liability agreement.

I have read understood and agreed to be bound by the limited warranty and liability agreement above and agree to submit disputes arising out of matters included in the arbitration of disputes provision to neutral arbitration.

Signature (required)

Signature of parent or guardian if user is under the age of majority

Date

10-4-00

Patmont Products Require Personal Responsibility

IF IT DOESN'T SAY

GO-PED

IT'S NOT A GO-PED[®]

www.goped.com

MAIL TO:
PMW
P.O. BOX 97
PLEASANTON, CA 94588

Go-Ped[®] is a registered

STATE'S
EXHIBIT

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State's Exhibit Number 15

Map of Dallas

(Copy attached)



STATES
EXHIBIT

15

PENGAD-Bayonne, N.J.

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State's Exhibit Number 16

Photo of RaceTrac

(Copy attached)



PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 17
Transaction Report Master Card
(Copy attached)

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RICHARDSON		1757500000000031	0010205	XHI

[illegible]

1225 E. BELT LINE	99999999999999	101	1225000000000031
RICHARDSON	99999999999999		175750000000000031
			00102050000006

[illegible]

185 E. BELT LINE
RICHARDSON
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1757500000000031 0010205000007

[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]

CHACHO'S N N	TERRELL TX	101
9999999999999999	9999999999999999	17575000000000031
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**STATE'S
EXHIBIT**

EXHIBIT
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State's Exhibit Number 18A

11

Transaction Report Discover Card

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(Copy attached)

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6011 0080 5062 7147 *

DISCOVER CARD

* DSC052 @1FA 10/06/00

CUNNINGHAM, BERTIE

* FEDNET DETAIL REVIEW *

* NO AUTH BUYERS *

14:26:44

* FOR THIS ACCOUNT *

GARLAND

TX

CM EXP DATE: 08/03

10/05 20:24 MA	\$22	PHLLPS 66 AUTH ONLY	OLATHE	KS
10/05 20:09 MA	\$25	COLE MOUNTAIN	TERRELL	TX
10/04 19:45 MA	\$1,728	HQ RICHARDSON MOTOR SPORT	RICHARDSON	TX
10/03 13:35 MA	\$8	HOME DEPOT 556	GARLAND	TX
10/03 PY	\$314-	PAYMENT - THANK YOU		
10/02 17:51 MA	\$17	MFS 81	GARLAND	TX
09/28 15:08 MA	\$10	SNS 225	RICHARDSON	TX
09/25 17:03 MA	\$8	ALBERTSONS 4260	RICHARDSON	TX
09/25 10:29 MA	\$16	MFS 81	GARLAND	TX
09/22 10:47 MA	\$15	SNS 207	GARLAND	TX
09/19 12:41 MA	\$15	CLARK RETAIL ENTERPRISES	GLEN ELLYN	IL
09/18 15:05 MA	\$8	IHOP 1413	PLANO	TX
09/15 10:37 MA	\$13	KROGER DALLAS # 557	GARLAND	TX
09/14 12:10 MA	\$12	ALBERTSONS 4260	RICHARDSON	TX
09/14 11:08 MA	\$21	SEARS 1207	RICHARDSON	TX

F3=SFR F6=MEMOS F7=UP F8=DOWN F9=SFI F11=EXPAND F18=ADD MEMOS

ENGAD-Bayonne, N.J.

STATE'S
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State's Exhibit Number 18B
Transaction Report Discover Card
(Copy attached)

6011 0085 3069 7884 *

DISCOVER CARD

* DSC052 @518 10/05/00

CONNER, FRANCES LOUISE

* FEDNET DETAIL REVIEW *

09:06:40

* NO AUTH BUYERS *

* FOR THIS ACCOUNT *

CM EXP DATE: 03/05

DALLAS

TX

10/05 05:33 CD	\$201	MAC/PHILDELPHIA NAT'L	NEW ALBANY	OH
10/04 15:58 MA	\$32	JC PENNEY AUTH RETAIL	DALLAS	TX
10/04 12:55 MA	\$46	DILLARDS, AUTH ONLY	LITTLE ROCK	AR
10/03 13:59 MA	\$14	ECKERD 0943	RICHARDSON	TX
10/03 13:42 MA	\$20	ALBERTSONS 4260	RICHARDSON	TX
10/02 17:02 MA	\$9	DRUG EMPORIUM 14	RICHARDSON	TX
09/29 16:44 MA	\$44	ALBERTSONS 4260	RICHARDSON	TX
09/26 16:05 MA	\$12	MERVYN'S AUTH ONLY	PHOENIX	AZ
09/25 17:08 MA	\$52	ALBERTSONS 4260	RICHARDSON	TX
09/22 15:30 MA	\$13	WALMART*SAMS CLUB AUTH	BENTONVILLE	AR
09/13 16:30 MA	\$12	HQ WALGREEN ELECTRONIC	DANVILLE	IL
09/13 14:33 MA	\$98	HQ V TERRY MILLER, DDS	DALLAS	TX
09/11 10:18 NM		TAAP ACCOUNT	JALICEA	
09/04 PY	\$213-	PAYMENT - THANK YOU		
09/01 04:26 NM		PRELIMINARY REISSUE		

F3=SFR F6=MEMOS F7=UP F8=DOWN F9=SFI F11=EXPAND F18=ADD MEMOS

PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 20
Photograph of 509 Lamar
(Copy attached)



PENGAD-Bayonne, N.J.

STATE'S
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State's Exhibit Number 21
Photograph of Chacho's
(Copy attached)



PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 22
Photograph of Cowboys
(Copy attached)



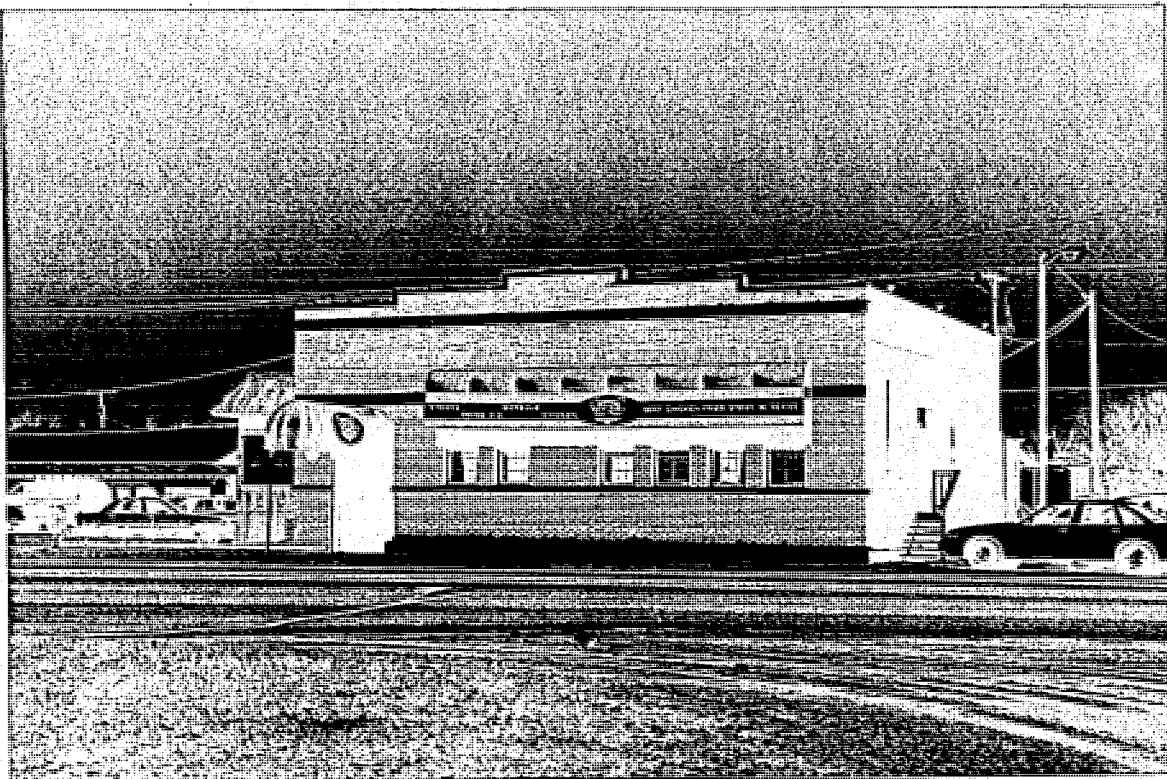
PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 23
Photograph of Cole Mountain
(Copy attached)



PENGAD-Bayonne N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 26

Videotape (Fast Speed)

(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 26A

Videotape (Slower Speed)

(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 27

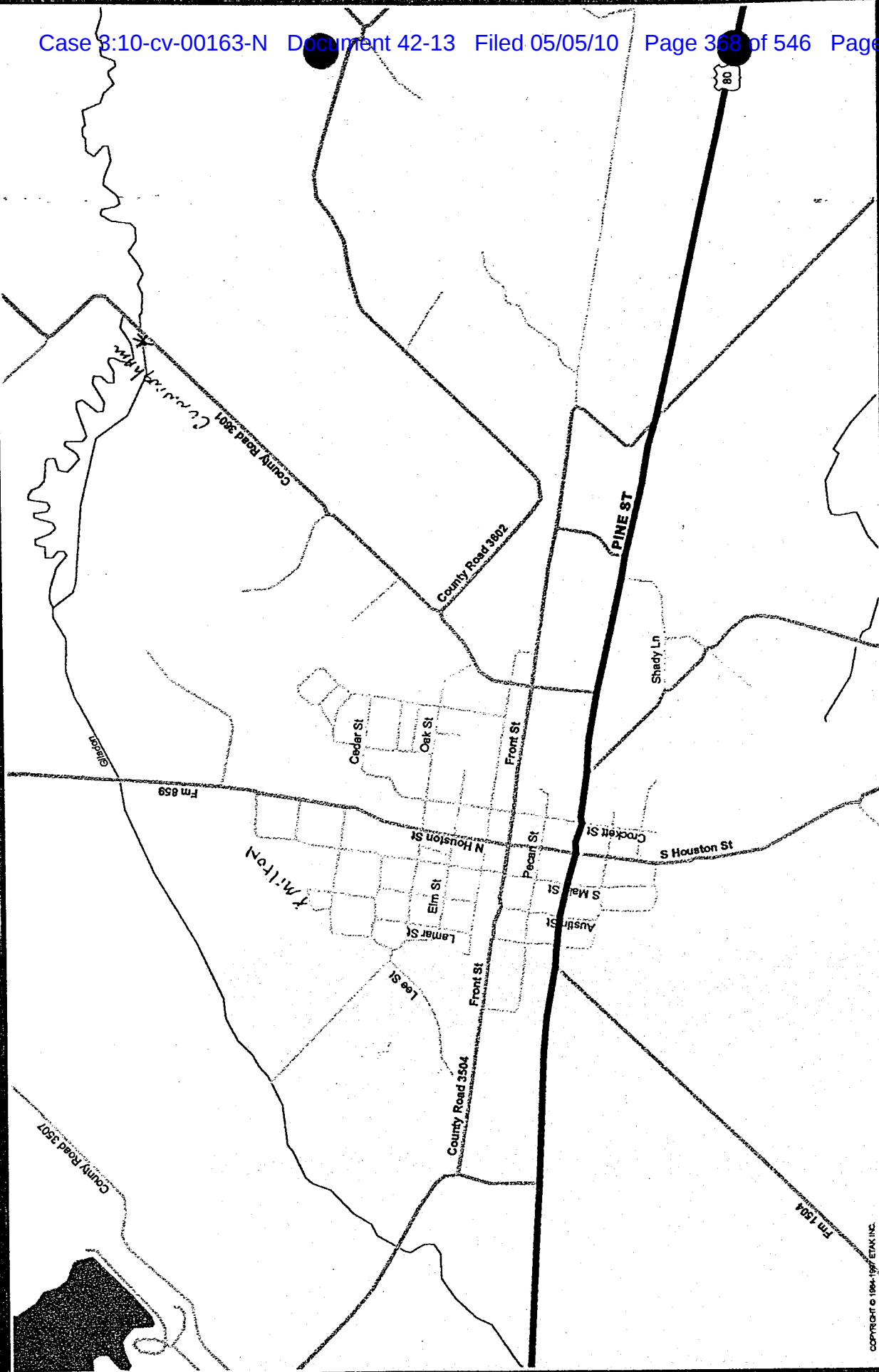
Map of Edgewood

(Copy attached)

STATES
EXHIBIT

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PENGAD-Bayonne, N.J.



COPYRIGHT © 1984-1997 ETAK INC.

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State's Exhibit Number 28

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Crime Scene Photograph

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(Copy attached)

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PENGAD-Bayonne, N.J.

STATE'S
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State's Exhibit Number 29
Crime Scene Photograph
(Copy attached)



PENGAO-Bayonne, N.J.
STATE'S
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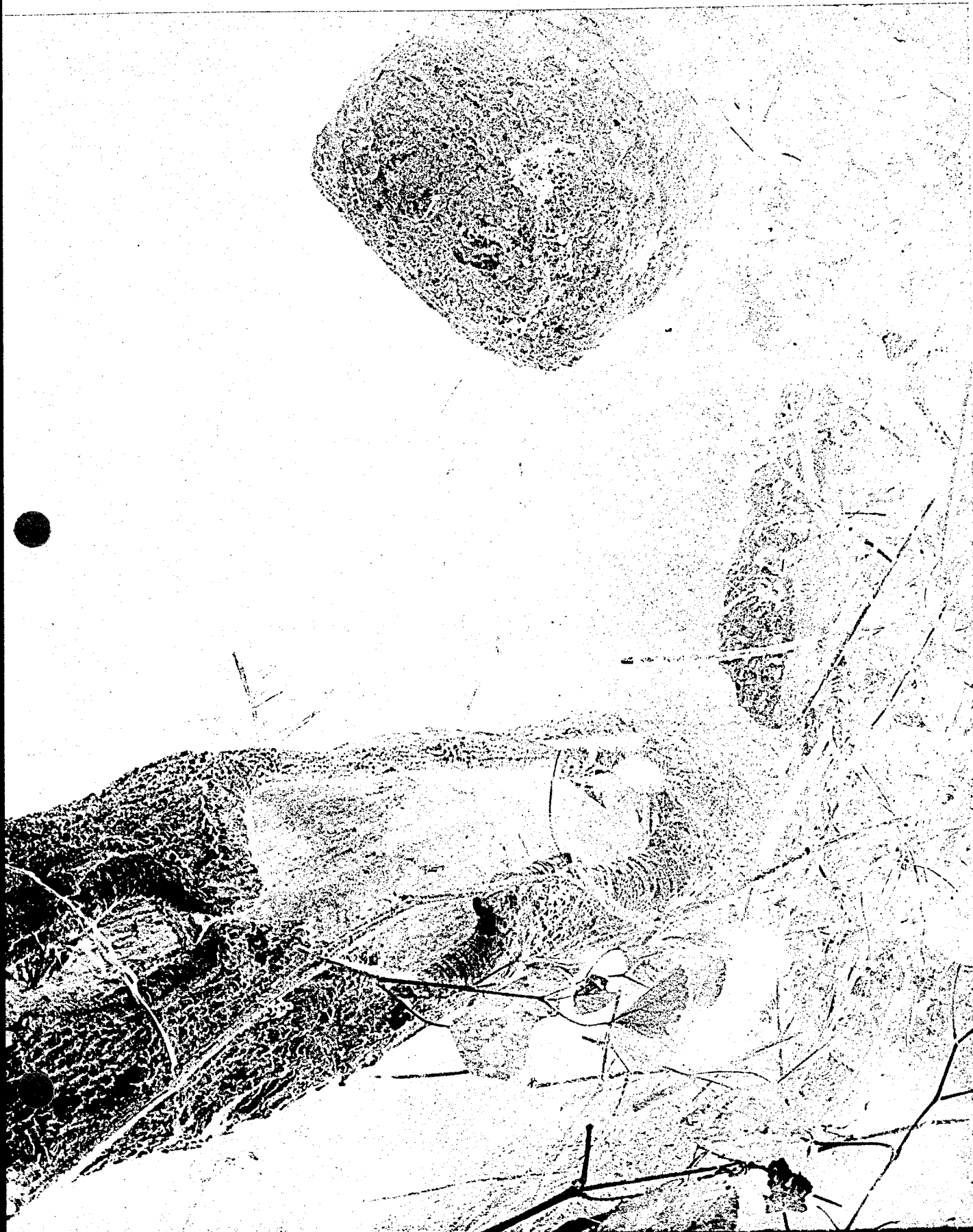
State's Exhibit Number 30
Crime Scene Photograph
(Copy attached)



PENNA. Bayonne, N.J.
STATE'S
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State's Exhibit Number 31
Crime Scene Photograph
(Copy attached)



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State's Exhibit Number 32

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Crime Scene Photograph

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(Copy attached)

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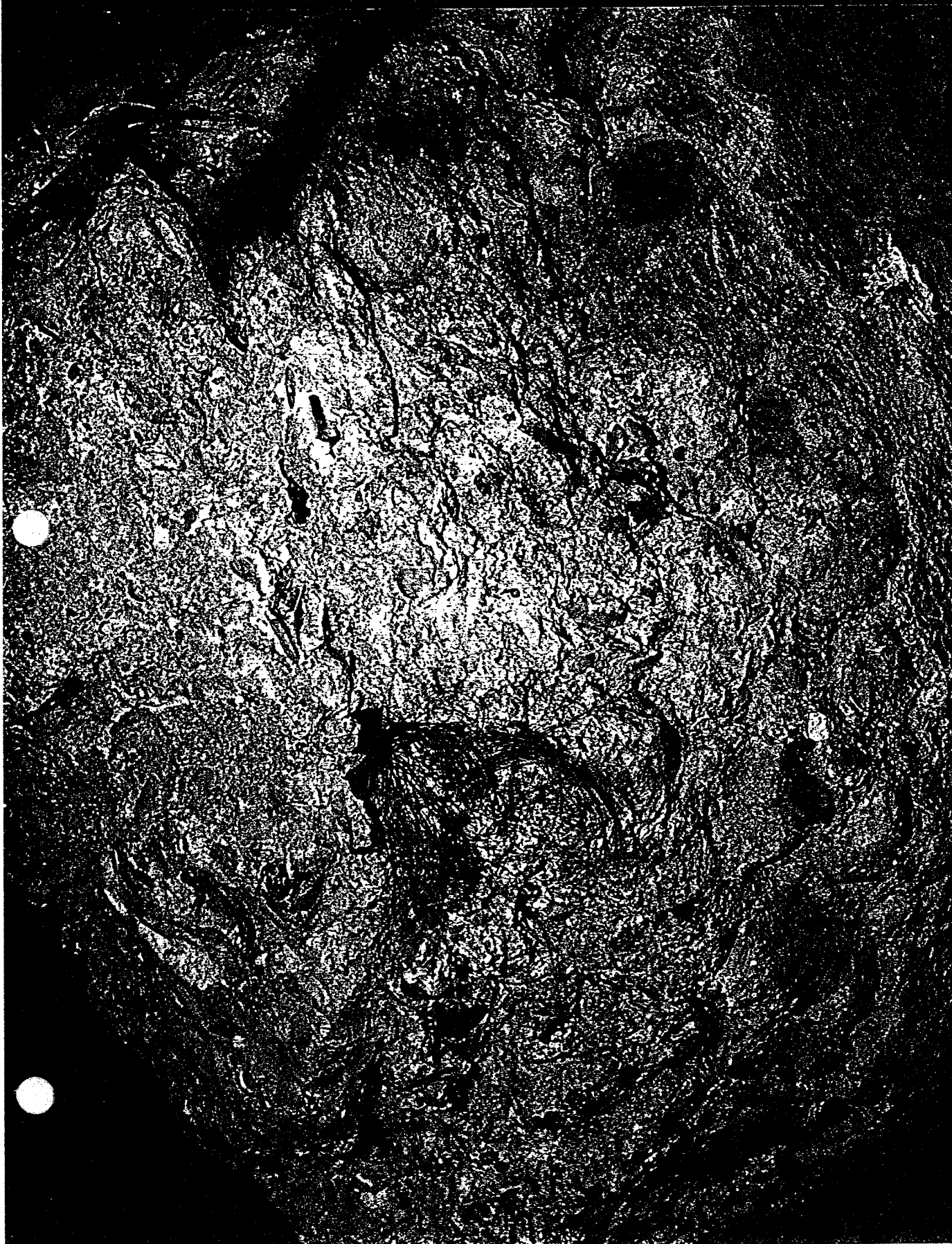
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STATE'S
EXHIBIT

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ENGAD-Bayonne, N.J.



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State's Exhibit Number 33
Crime Scene Photograph
(Copy attached)

STATE'S
EXHIBIT

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PENGAD Bayonne, N.J.



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State's Exhibit Number 34
Crime Scene Photograph
(Copy attached)



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State's Exhibit Number 35

Magistrate Warning

(Copy attached)

Before me, the undersigned magistrate of the State of Texas on this day personally appeared

Jedidiah Isaac Murphy
in the custody of Chief Gary Rose, Van Zandt County Sheriff's Department, A peace officer and said person was given the following warning by me:

- ☒ (1) You are charged with the offense(s) of Credit Card Abuse Warrant # R030225
Garland Police Department, Garland, Tx
An affidavit charging you with this offense(s) *(has) ☒ (has not) been filed in this Court.
- ☒ (2) You have a right to hire a lawyer and have your lawyer present prior to and during any interview and questioning by peace officers or attorneys representing the State. If you are too poor to afford a lawyer, you have the right to request the appointment of a lawyer to be present prior to and during any such interview and questioning. You may have reasonable time and opportunity to consult your lawyer if you desire.
- ☒ (3) You have the right to remain silent.
- ☒ (4) You are not required to make a statement, and any statement you make can and may be used against you in Court.
- ☒ (5) You have the right to stop any interview or questioning at any time.
- ☒ (6) You have the right to have an examining trial.

*Your bail is set at \$ 50,000.00

*Bail not determined

*Bail is denied

☒ Check while reading

Place of Warning Van Zandt Jedidiah Isaac Murphy
Edgewood Police Department Person's Name
Edgewood, Tx 75117 Magistrate
Justice of the Peace, Precinct 3
TIME: 5:00 AM
DATE: 5:00 October 19 2000

WITNESSES:

REMARKS:

Known Address
1718 Barclay
Richardson, Tx

Name

Address

City

Name

Address

City

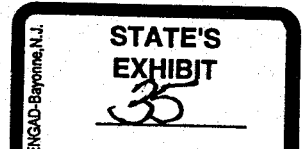
090175 WTH
DL - Unknown

Delete what is not applicable.

White Magistrate

Yellow: Agency

Pink: District Attorney
Gold: Defendant



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State's Exhibit Number 36
Magistrate Warning
(Copy attached)

Before me, the undersigned magistrate of the State of Texas on this day personally appeared

Jedidiah Isaac Murphy
in the custody of Chief Deputy Gary Rose, Van Zandt County, A peace officer and said person was given the following warning by me: Sheriff's Department

☒ (1) You are charged with the offense(s) of

Murder

An affidavit charging you with this offense(s) *(has) *(has not) been filed in this Court.

☒ (2) You have a right to hire a lawyer and have your lawyer present prior to and during any interview and questioning by peace officers or attorneys representing the State. If you are too poor to afford a lawyer, you have the right to request the appointment of a lawyer to be present prior to and during any such interview and questioning. You may have reasonable time and opportunity to consult your lawyer if you desire.

☒ (3) You have the right to remain silent.

☒ (4) You are not required to make a statement, and any statement you make can and may be used against you in Court.

☒ (5) You have the right to stop any interview or questioning at any time.

☒ (6) You have the right to have an examining trial.

*Your bail is set at \$

\$1,000,000.00

*Bail not determined

*Bail is denied

☒ Check while reading

Place of Warning

Van Zandt

Edgewood Police Department

Edgewood, Tx

75117

Person Wanted

Magistrate

Title

Jedidiah Isaac Murphy
Justice of the Peace, Precinct 3

TIME:

5:00

A M.

DATE:

October 6

-19-2000

WITNESSES:

REMARKS:

Known Address
1718 Barclay
Richardson, Tx

090125 WTH

Q& Unknown

Delete what is not applicable.

Gary Rose

Name

Address

City

Name

Address

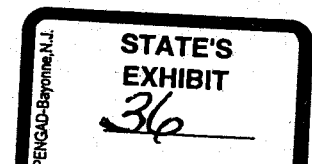
City

White Magistrate

Yellow: Agency

Pink: District Attorney

Gold: Defendant



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State's Exhibit Number 38

Vacuum Hose

(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 39

Heater Hose

(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 40

Blue Towel

(Not attached - retained by Physical evidence clerk)

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State's Exhibit Number 41
Miranda Warning Sheet 10-6-2000
(Copy attached)

WARNING TO BE GIVEN BEFORE TAKING
ANY ORAL OR WRITTEN CONFESSION

ON THE 6 DAY OF October, 2000 AT 8:52 O'CLOCK A M,

M. J. Myers ADVISED ME, Jedidiah Isaac Murphy THAT

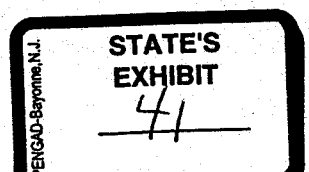
1. I HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE ME EITHER PRIOR TO OR DURING ANY QUESTIONING.
2. IF I AM UNABLE TO EMPLOY A LAWYER I HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO COUNSEL WITH ME PRIOR TO OR DURING ANY QUESTIONING, AND
3. I HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND THAT ANY STATEMENT THAT I MAKE MAY AND PROBABLY WILL BE USED IN EVIDENCE AGAINST ME AT MY TRIAL.
4. I HAVE THE RIGHT TO TERMINATE THE INTERVIEW AT ANY TIME.

I UNDERSTAND ALL OF THE ABOVE EXPLAINED RIGHTS.

SIGNED

Jedidiah Isaac Murphy

WITNESS _____



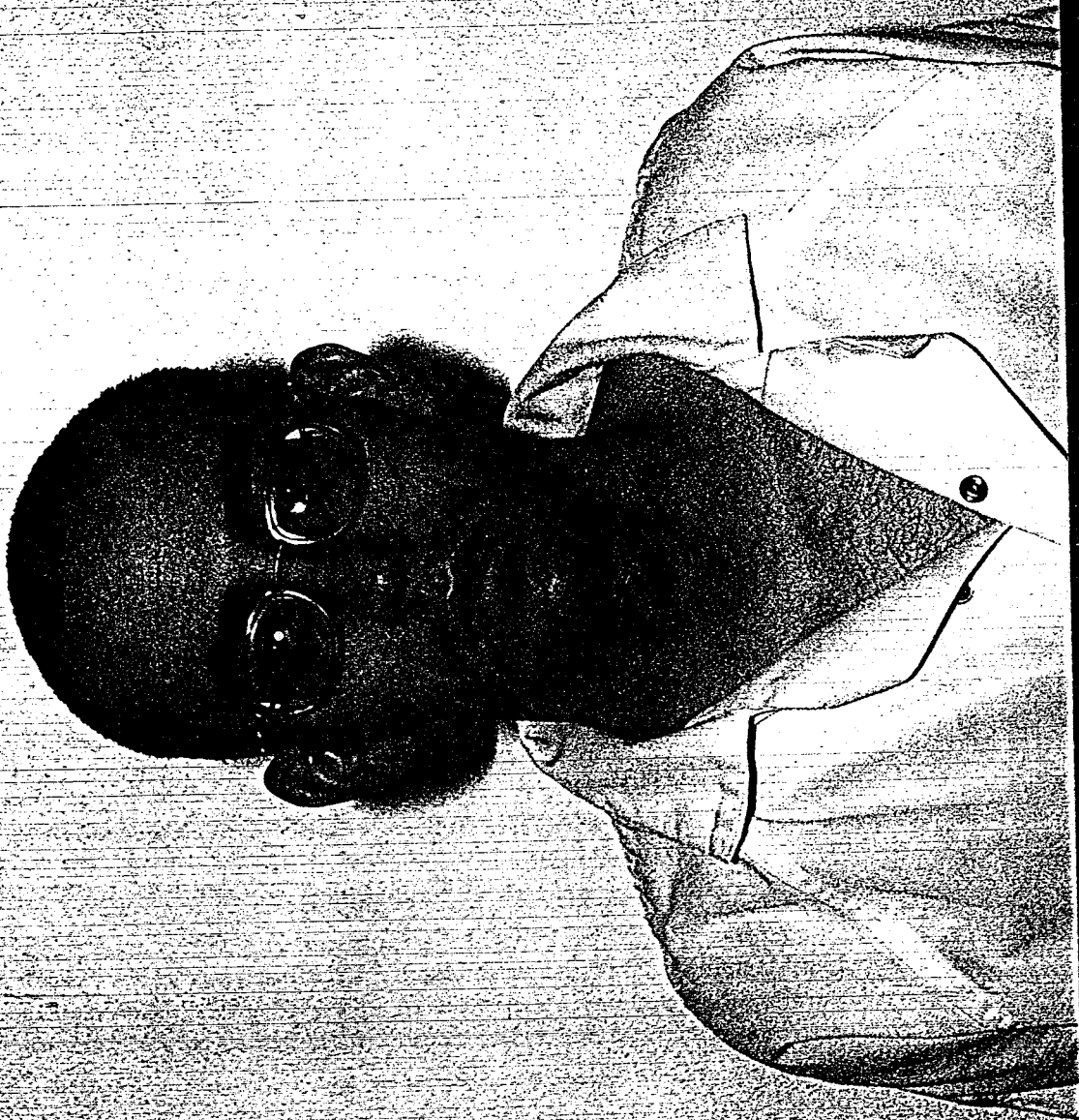
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State's Exhibit Number 42
Photograph of Defendant
(Copy attached)

STATE'S
EXHIBIT

42

PENNSAD-Bayonne, N.J.



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State's Exhibit Number 43
Photograph of Defendant
(Copy attached)

STATE'S
EXHIBIT

43

PENGAD-Bayonne, N.J.



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State's Exhibit Number 44

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Photograph of Defendant

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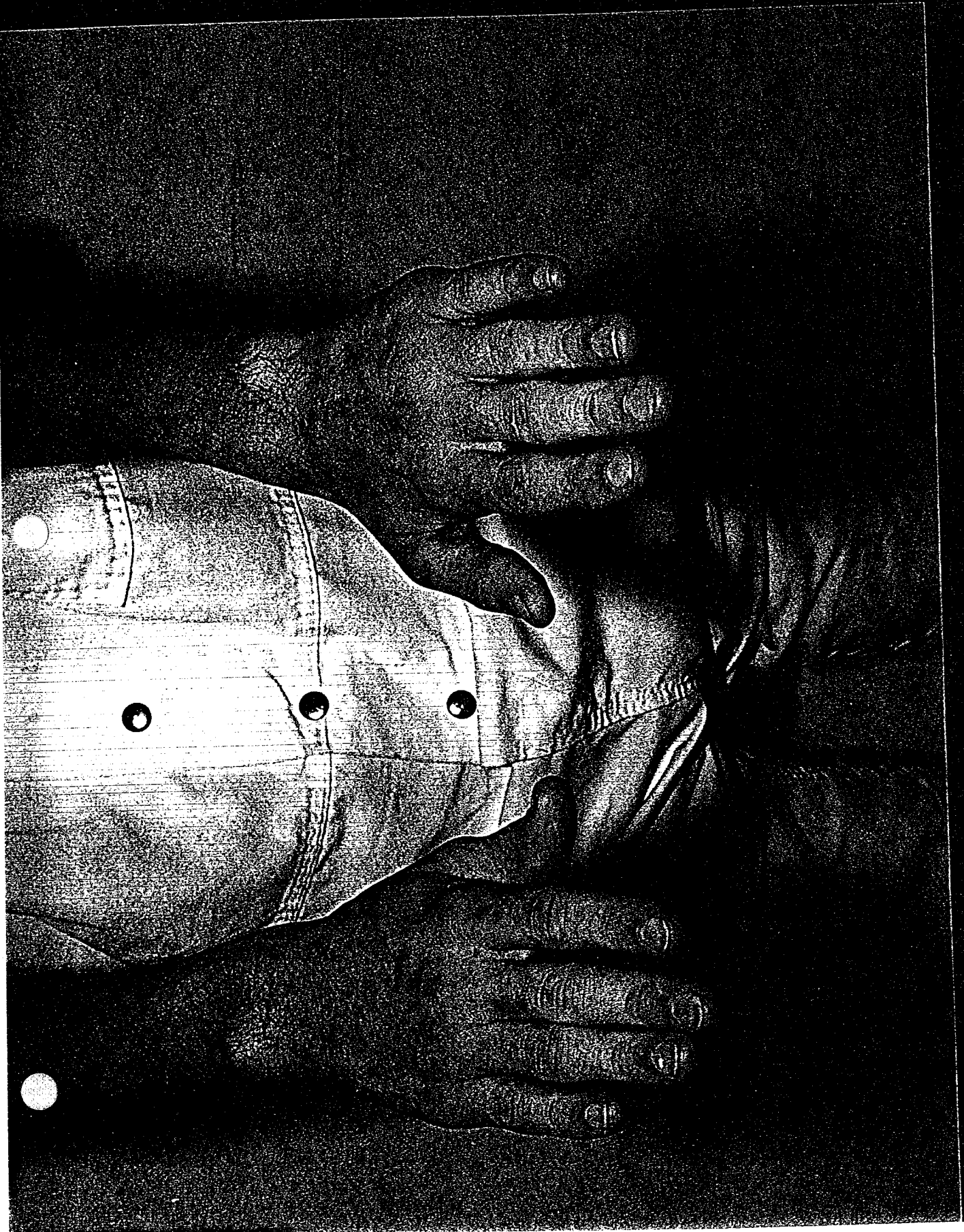
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STATE'S
EXHIBIT

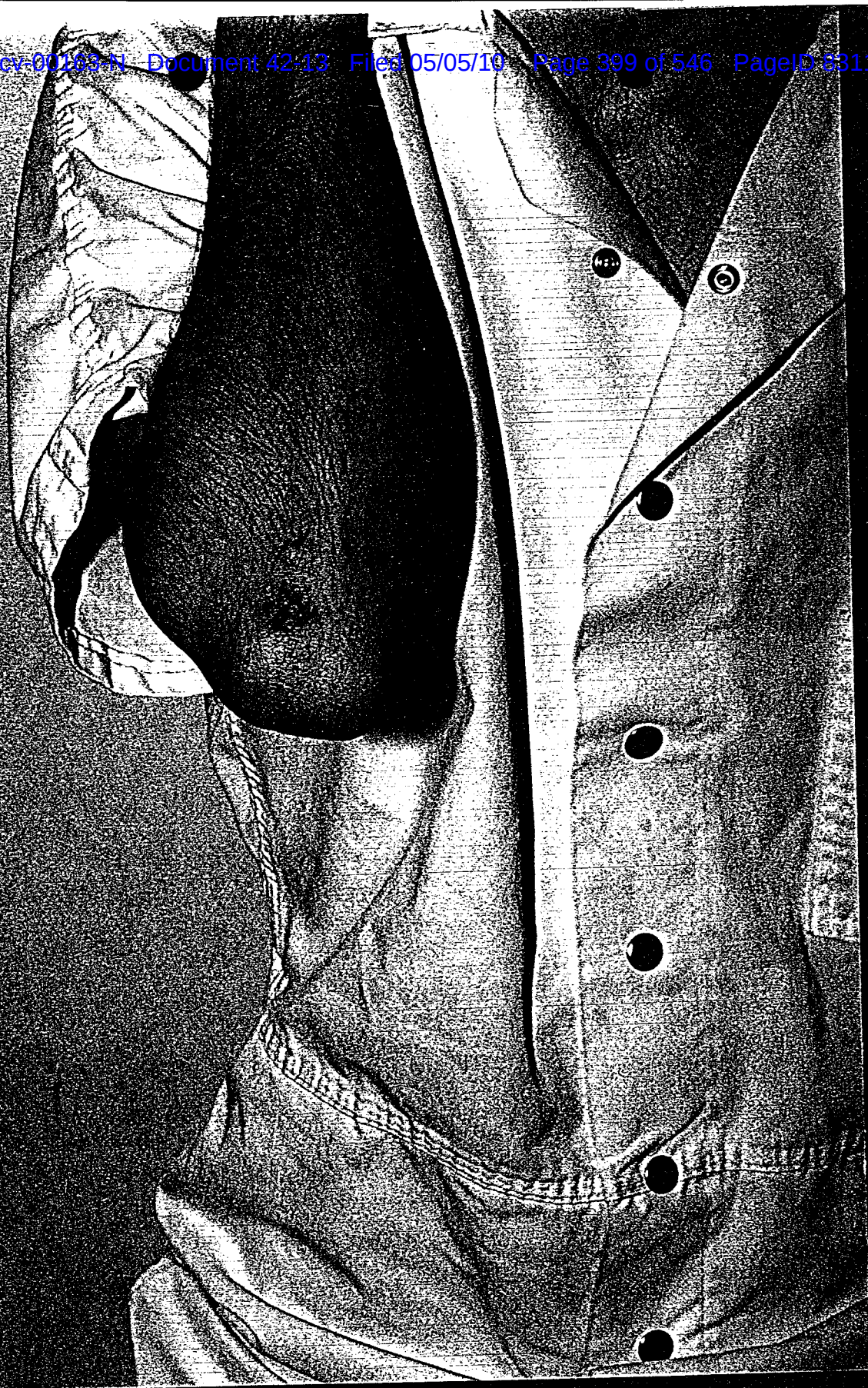
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PENGAD-Bayonne, N.J.



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State's Exhibit Number 45
Photograph of Defendant
(Copy attached)



PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 46
Photograph of Defendant
(Copy attached)



PENGUIN Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 47

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Voluntary Statement

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(Copy attached)

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VOLUNTARY STATEMENT

DATE Oct 6 2000 TIME 11:30 A.M. PLACE 217 N. Fifth St. Garland Tx

I, Jedidiah Isaac Murphy, am 25 years old and I live at 1718 Barclay Richardson Tx

I am giving this statement to M. J. Myers, who has identified himself as a Police Officer of the City of Garland, and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and through no fear, coercion or threat of physical harm by any person or persons whomsoever:

I was drinking heavily and decided I was going to visit my daughter and end my life. I packed my stuff and left my sister headed to Bleachers Sports bar for something to drink. I drank more ~~alcohol~~ alcohol and started walking down the road beside Bleachers on my way to 635 so I could hitch a ride to Wills Point to see Alyson where exactly I saw Miss Beate but I told her I needed a ride to 655 and she agreed to take me as long as she was safe. I assured her I wasn't out to hurt anyone and we drove off. We rode off toward 635 and about 30 minutes into heavy construction I decided what

I have read this statement consisting of 5 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Jedidiah Isaac Murphy
Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by:

M. J. Myers
(This must be one and the same officer as named above)

Witness J V Zolt #215

STATE'S
EXHIBIT

47

VOLUNTARY STATEMENT

DATE Oct 6 2009 TIME 11:30 A.M. PLACE 217 N. Fifth St Garland TX

I, Jedidiah Isaac Murphy, am 25 years old and I live at 1218 Barclay Richardson TX.

I am giving this statement to M. J. Myers, who has identified himself as a Police Officer of the City of Garland, and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and through no fear, coercion or threat of physical harm by any person or persons whomsoever:

I was doing was wrong so I told miss Berte to let me drive so I could take her and her car somewhere I could leave them so I could hitch a ride to 635. We pulled into a parking lot and I told her I was going to put her in the trunk and go to a payphone and call the police after I got far enough away so they could get her out safely. After she got in the trunk I had the gun in my right hand and before I spun the trunk I switched hands because I can't feel my left hand and its habit for me to use my right hand to open and

I have read this statement consisting of 5 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Jedidiah Isaac Murphy
Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by:

less

dr Mike #215

MJ Myers
(This must be one and the same officer as named above)

VOLUNTARY STATEMENT

DATE Oct 6 2000 TIME 11:30 A M. PLACE 217 N. Fifth Garland Tx 75040
 I, Jedidiah Isaac Murphy, am 25 years old and I live at
1718 Barclay Richardson Tx

I am giving this statement to M. J. Myers, who has identified himself as a Police Officer of the City of Garland, and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and through no fear, coercion or threat of physical harm by any person or persons whomsoever:

Close doors. When I reached for the trunk lid I still had the gun in my left hand and grabbed it too hard and it shot her. I freaked out and started to run but I went back to see what happened to her and I know she was gone so I drove all night drinking as if I told myself this didn't happen and decided I was going to wait until my sister left for work and the whole time my mind was telling me it didn't happen. The next morning I went to my sisters, parked the car in the garage and put a shop vac hose in the tailpipe and into the back window.

I have read this statement consisting of 5 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Jedidiah Isaac Murphy
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by:

M. J. Myers
 (This must be one and the same officer as named above)

less J V Book #215

VOLUNTARY STATEMENT

DATE Oct 6 2008 TIME 11:00 A.M. PLACE 217 N. F. 5th St Garland TX

I, Jedidiah Isaac Murphy, am 25 years old and I live at 1718 Barclay Richardson TX

I am giving this statement to M. J. Myers, who has identified himself as a Police Officer of the City of Garland, and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and through no fear, coercion or threat of physical harm by any person or persons whomsoever:

I layed in the front seat and cranked the car and before I fell unconscious the thought of my niece and sister seeing me dead and discovering what had happened would destroy them both. So I left the house and decided to go see and old friend Shod and my daughter and kill myself at the country somewhere. I bought beer in Terrell and continued to block what had happened while drinking. I went to Shod and then went for more beer and whiskey and intended to leave that night to commit suicide. I got tired because I had been up for 2 days and hadn't stopped drinking yet.

I have read this statement consisting of 5 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Jedidiah Isaac Murphy
Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by:

MJ Myers
(This must be one and the same officer as named above)

less 1 ✓ 2008 # 215-

DATE Oct 6 2000 TIME 11:30 A.M. PLACE 217 N. Fifth St Garland Tx
 I, Jedidiah Isaac Murphy, am 25 years old and I live at
1718 Barclay Richardson Tx

I am giving this statement to M. J. Myers, who has identified himself as a Police Officer of the City of Garland, and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and through no fear, coercion or threat of physical harm by any person or persons whomsoever:

I put my Burt at the bottom of Livingston hill cause the end of all this had come but was not going to kill myself untill I saw Alyssa Hood offered me a place to sleep and I decided to sleep till morning see Alyssa and finish my life. While sleeping the police came in and arrested me. So all the people destroyed by this was not intentional and I'm sure you wish me dead and I would wish the same. I'm cooperating so you understand I'm not trying to hide what happened and the fact is I'm not an evil person who hurts people

I have read this statement consisting of 5 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Jedidiah Isaac Murphy
 Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by:

Witness

M. J. Myers #215

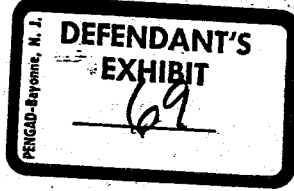
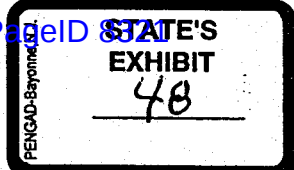
M. J. Myers
 (This must be one and the same officer as named above)

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State's Exhibit Number 48
Miranda Warning Sheet 10-7-200
(Copy attached)

2 cups coffee
1 cigarette

Returned to
cell @ 12:05 PM



WARNING TO BE GIVEN BEFORE TAKING
ANY ORAL OR WRITTEN CONFESSION

ON THE 7 DAY OF OCTOBER, 2000, AT 11:30 O'CLOCK A M,

M. J. MYERS ADVISED ME, JEDIDAH ISAAC Murphy THAT

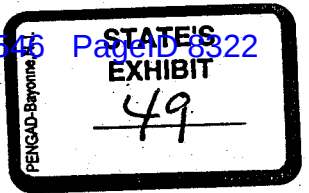
1. I HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE ME EITHER PRIOR TO OR DURING ANY QUESTIONING.
2. IF I AM UNABLE TO EMPLOY A LAWYER I HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO COUNSEL WITH ME PRIOR TO OR DURING ANY QUESTIONING, AND
3. I HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND THAT ANY STATEMENT THAT I MAKE MAY AND PROBABLY WILL BE USED IN EVIDENCE AGAINST ME AT MY TRIAL.
4. I HAVE THE RIGHT TO TERMINATE THE INTERVIEW AT ANY TIME.

I UNDERSTAND ALL OF THE ABOVE EXPLAINED RIGHTS.

SIGNED Jedidah Isaac Murphy

WITNESS MJ Myers

- YES 1. DID YOU MEET WITH A LAWYER(S) YESTERDAY?
- YES 2. DOES THE LAWYER(S) REPRESENT YOU?
- NO 3. DID THE LAWYER(S) ADVISE YOU NOT TO TALK TO POLICE OFFICERS?
- YES 4. DID THE LAWYER(S) ADVISE YOU TO COOPERATE WITH POLICE OFFICERS.



10/7/00

Town Houses

STREET

BUS

LARGE PARKING LOT

GAS PUMPS
8 8 8

PARKING

PARKING

PARKING

* I'M HERE
BERTIE'S CAR

sides of
these buildings
are landscape
smoked glass
all the way around

BUS

LARGE BUILDING
NOT SURE ONE Bld.
" MULTIPLE IS.

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State's Exhibit Number 50

11

Miranda Warning Sheet 10-11-2000

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(Copy attached)

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STATES
EXHIBIT50DEFENDANT'S
EXHIBIT3

WARNING TO BE GIVEN BEFORE TAKING

ANY ORAL OR WRITTEN CONFESSION

ON THE 11 DAY OF October, 2000, AT 9:02 O'CLOCK A M,M. J. MYERS ADVISED ME, Jedidiah Isaac Murphy THAT

1. I HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE ME EITHER PRIOR TO OR DURING ANY QUESTIONING.
2. IF I AM UNABLE TO EMPLOY A LAWYER I HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO COUNSEL WITH ME PRIOR TO OR DURING ANY QUESTIONING, AND
3. I HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND THAT ANY STATEMENT THAT I MAKE MAY AND PROBABLY WILL BE USED IN EVIDENCE AGAINST ME AT MY TRIAL.
4. I HAVE THE RIGHT TO TERMINATE THE INTERVIEW AT ANY TIME.

I UNDERSTAND ALL OF THE ABOVE EXPLAINED RIGHTS.

SIGNED

Jedidiah Isaac Murphy

WITNESS

mj myers2 coffee
2 cigarettes

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State's Exhibit Number 51

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Miranda Warning Sheet 10-13-2000

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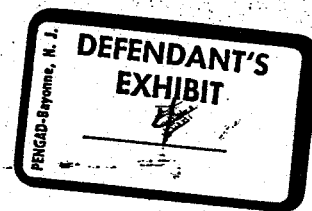
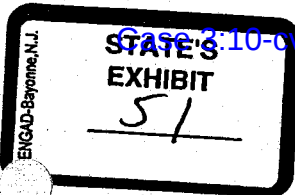
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WARNING TO BE GIVEN BEFORE TAKING
ANY ORAL OR WRITTEN CONFESSION

ON THE 13 DAY OF October, 18 2000, AT _____ O'CLOCK _____ M,

M. J. Myers ADVISED ME, Jedidiah Isaac Murphy THAT

1. I HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE ME EITHER PRIOR TO OR DURING ANY QUESTIONING.
2. IF I AM UNABLE TO EMPLOY A LAWYER I HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO COUNSEL WITH ME PRIOR TO OR DURING ANY QUESTIONING, AND
3. I HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND THAT ANY STATEMENT THAT I MAKE MAY AND PROBABLY WILL BE USED IN EVIDENCE AGAINST ME AT MY TRIAL.
4. I HAVE THE RIGHT TO TERMINATE THE INTERVIEW AT ANY TIME.

I UNDERSTAND ALL OF THE ABOVE EXPLAINED RIGHTS.

SIGNED _____

WITNESS _____

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State's Exhibit Number 52
Receipt Cole Mountain
(Copy attached)

[illegible]

COLE MOUNTAIN
419 E. MOORE
TERRELL, TX 75160

TERMINAL I.D.: LK140778

MERCHANT #: 542929007150386

DISCOVER SRV: 13
6011000050627147

SALE EXP.: 08/03
BATCH: 000064 INVOICE: 277128
DATE: OCT 05, 00 TIME: 19:05
AUTH NO: 005464

BASE \$25.28
TIP 5.00

TOTAL

BERTIE CUNNINGHAM
X [Signature]
I AGREE TO PAY ABOVE TOTAL AMOUNT
ACCORDING TO CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

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State's Exhibit Number 53
Cowboys Quick Receipt
(Copy attached)

COMMINGHAM/BERTIE
INVOICE
3485
02 6018080202147
AGREEMENT. PHILIPS 88 CO.
AMOUNT ACCORDING TO THE CARD ISSUER
CUSTOMER AGREES TO PAY THE ABOVE TOTAL

TOTAL \$ 53.53

12.393 V 044.1 00 JMD V 083.21
09.18 PM 09.18 PM

*** CHARGE ***
0011060300
TERRETT TX 75180
558 E MOORE
COMBOYS QUICK

STATE'S
EXHIBIT
53

PENGAD-Bayonne, N.J.

RECEIVED 2 SIGN

COWBOYS QUICK
228 E MOORE
TERRELL TX 75160


09110000288
*** CHARGE ***

10/05/00 06:18 PM

15.303 U LNL 0\$ 1.449 \$ 22.29

TOTAL \$ 22.29

CUSTOMER AGREES TO PAY THE ABOVE TOTAL
AMOUNT ACCORDING TO THE CARD ISSUER
AGREEMENT. PHILLIPS 66 CO.
DS 6011000050627147 00/03
005037 INVOICE# 3982
CUNNINGHAM/BERTIE


CARDHOLDER'S SIGNATURE

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State's Exhibit Number 54

Autopsy Report

(Copy attached)

SOUTHWESTERN
INSTITUTE OF FORENSIC SCIENCES
5230 Medical Center Drive
Dallas, Texas 75235

COPY

DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

Case No. JP3564-00-2564JD

Name: Cunningham, Bertie

Age: 80 Race: White Sex: Female

Date of Death: 06 OCT 2000 (Found) Date of Examination: 06 OCT 2000
Time of Death: Found 5:17 am Time of Examination: 11:30 am

Pronounced at: Livingston Creek, 1 mi. S. of Edgewood
Rural, Van Zandt County, Texas

AUTOPSY REPORT:

ORGAN WEIGHTS:

Brain	1180 g	R. Lung	520 g	R. Kidney	110 g
Heart	420 g	L. Lung	480 g	L. Kidney	110 g
Liver	1110 g	Spleen	90 g		

This autopsy is performed at the request of W. Ozelle Wilcoxson, Justice of the Peace, Precinct 3, Place 1, Van Zandt County, Texas.

EXTERNAL EXAMINATION:

The body is photographed, fingerprinted, palm printed, x-rayed, and tagged. Radiographs of the head reveal multiple tiny fragments and one larger fragment of radiodense material consistent with the recovered projectile.

The body is received in a green crash bag and dressed in a short-sleeved floral-print blouse, a beige bra with a left prosthesis, white panties, pink pants, and two white sandals. Also received with the body is a blue plastic bag, a green duffel bag, a brown towel, a green sweat shirt, and gray sweat pants. All clothing is soaking wet and heavy. The blouse is bloodstained. No jewelry or personal effects are present. The hands are not enclosed in paper bags. Several black hairs are recovered from the clothing and submitted in an appropriately labeled envelope to the Criminal Investigation Laboratory.

The body is that of a normally developed, elderly, adult, white female of average frame who appears the recorded age of 80 years. The body is mildly overweight, measuring 64 inches (162.6 cm) and weighing 142 pounds (64.4 kg). The preservation is that of very early to early decomposition with absence of rigor mortis, fixed red-purple lividity over the posterior aspect of the body, skin slippage over the posterior aspect of the body, and extensive aquatic animal activity involving the left earlobe, the left side of the face, including

PENGAD-Bayonne, N.J.

STATE'S
EXHIBIT

54

COPY
Page 2

Case No: JP3564-00-2564JD

Name: Cunningham, Bertie

DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

the left eye, the left side of the nose, the left cheek, and the left jaw. Aquatic animal activity is also noted about the left posterior forearm. The body is not embalmed. The body is cold to touch after refrigeration.

The hairline is normal. The head hair is thin, gray/black, short and loosely curled, measuring up to 3 inches in length. The body hair pattern is that of a normal average adult female. The scalp is unremarkable except as noted subsequently. The ears are unremarkable. The earlobes are not pierced. The right eye is closed. The left eye is open as a result of aquatic animal activity. The corneae are slightly cloudy to cloudy, the irides brown, and the conjunctivae remarkable for a right lateral scleral hemorrhage. The nose and mouth are unremarkable. The teeth are natural and in good repair. The face, neck, chest, right breast, abdomen, extremities, genitalia, and back are all normally developed. The genitalia are those of a normal adult female. The fingernails are extremely short, covered with rose nail polish, and atraumatic.

IDENTIFYING MARKS AND SCARS:

There is a mastectomy scar extending from the midline of the chest across the left side of the chest to the axilla. A 3 inch, puckered, oblique, linear scar is noted over the right lower quadrant of the abdomen. A 4 inch, linear, vertical, well-healed scar is noted in the lower abdomen extending from the umbilicus to the symphysis pubis. A 1/2 inch, horizontal, well-healed scar is noted over the right knee.

EVIDENCE OF TREATMENT:

None.

EVIDENCE OF INJURY:

Evidence of injury consists of contusions and abrasions of the upper arms and trunk, and a single penetrating gunshot wound to the head.

PENETRATING GUNSHOT WOUND TO THE HEAD:

Entrance: Located over the right side of the forehead/frontal scalp, just behind the hairline, centered 1-1/2 inches below the top of the head and 2-1/4 inches to the right of midline and 3 inches above and 3/4 of an inch in front of the superior attachment of the right ear, is a gunshot entrance wound. The wound is round, measuring 1/8 inch in diameter and is surrounded by a thick (1/8 inch) rim of soot and visible gunpowder. No stippling is present.

Injuries: After perforating the scalp, the bullet entered the right frontal bone, creating a round, 3/8 inch diameter skull defect with distinct beveling inward. No soot is identified on the frontal bone or underlying dura. The bullet next perforated the right superiolateral frontal lobe and traveled downwards and posteriorly through the midline brain structures, emerging from the inferomedial aspect of the left temporal lobe. The bullet next struck the medial end of the left petrous ridge.

COPY
Page 3

Case No: JP3564-00-2564JD

Name: Cunningham, Bertie

DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

Recovery: Recovered from the left temporal lobe is a deformed, small-caliber, lead bullet. The base is inscribed with the numbers "JP3564-00" over the letters "JD," and submitted in an appropriately labeled envelope to the Criminal Investigation Laboratory. Also recovered are several minute lead fragments surrounding the entrance wound in the subscalpular tissues. These fragments are submitted in the same envelope.

Path: Right to left, downwards, and front to back.

Range of fire: Loose contact (soot and gunpowder deposited on abrasion ring).

Associated injuries: Associated with the bullet trajectory is a right periorbital contusion and right lateral scleral hemorrhage, subscalpular hemorrhage surrounding the gunshot entrance wound, fractures of the anterior cranial fossae, subarachnoid hemorrhage about the right frontal lobe, pulpefaction and hemorrhage along the wound path, and herniation contusions (bilateral parahippocampal gyri) and fracture contusions (bilateral inferior frontal lobes). Also present is a small amount of fluid and clotted blood in the sphenoid sinus.

OTHER INJURIES:

A 2 x 2 inch purple, irregular skin contusion is noted over the posterolateral aspect of the left upper arm. On the posteromedial aspect of the right upper arm, is a 1 inch, oval-shaped, blue-purple skin contusion and a 1/2 inch round, blue-purple skin contusion. On the right side of the chest, underlying the bra line, is a 1/2 inch oval-shaped, dark purple skin contusion. A horizontal, yellow-brown, patterned skin imprint/abrasion, measuring 6 x 1 inch is noted over the epigastrium. On the left side of the abdomen is a 5 x 1/8 inch linear, yellow-brown, patterned skin imprint/abrasion.

An ill-defined red-purple discoloration of the vaginal orifice at 3 and 9 o'clock is identified and sectioned for histology.

These injury having been described will not be repeated.

EVIDENCE COLLECTED:

- Pulled head hair standard
- Hairs recovered from clothing
- Blood standard
- Clothing
- Sexual assault kit
- Recovered projectile
- Handwashings.

INTERNAL EXAMINATION:

BODY CAVITIES: The body wall fat measures up to 1-1/2 inches in maximal thickness. All body viscera are in their normal anatomic relationship and position. There is approximately 20 cc of decomposition fluid in the right chest

Case No: JP3564-00-2564JD

COPY

Name: Cunningham, Bertie

DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

cavity, 40 cc in the left chest cavity and 2 cc in the pericardial sac. The peritoneal cavity is dry. There are dense fibrous adhesions between the right lung and the right chest wall.

BODY FLUIDS: The stomach contains 25 cc of dry, partially digested, soft, dark unrecognizable food fragments. The mucosal surface is autolyzed. The bladder is empty. The gallbladder contains 2 cc of light brown bile.

HEAD: See previous description.

NECK: The cutaneous and subcutaneous surfaces of the anterior neck are unremarkable. There is no strap muscle or carotid sheath hemorrhage. The thyroid cartilage and hyoid bone are intact. The lumen of the larynx and trachea is patent. The mucosal surfaces are unremarkable.

CARDIOVASCULAR SYSTEM: The aorta is of normal course and caliber with scattered intimal fatty streaks. The pericardium is unremarkable. The heart is enlarged. The epicardial surface is unremarkable. The coronary arterial system is right dominant. Multiple sections reveal partial calcification of the proximal left anterior descending and right coronary arteries. There is no atherosclerotic narrowing. Sections through the myocardium reveal uniform, tan-brown muscle tissue. All four chambers appear to be somewhat dilated. There is no evidence of old or recent infarct. The endocardial surface is smooth and tan-brown. There are no septal defects. All cardiac valve leaflets are relatively thin and translucent.

RESPIRATORY SYSTEM: The pleural surfaces of the lungs are plum-colored, smooth and crepitant. The pulmonary arteries are free of thromboemboli and the bronchi are free of fluid or obstruction. The sectioned surfaces reveal a speckled pattern of anthracosis and mild congestion. There is no evidence of consolidation or tumor.

GENITOURINARY SYSTEM: The renal capsules strip with ease, revealing pale, finely granular subcapsular surfaces. The sectioned surfaces reveal a normal renal architecture. The calyces, pelves and ureters are unremarkable. The bladder is empty. The bladder wall and bladder mucosa are unremarkable. The uterus, fallopian tubes, and ovaries are not found. The vaginal cuff is unremarkable except as noted above.

ENDOCRINE SYSTEM: The adrenal glands are unremarkable. The thyroid gland is remarkable for a 1 cm nodule of the left lobe with a dark red, meaty sectioned surface. The remainder of the thyroid gland is notably pale.

Except as noted above and for an absent appendix, the remaining organ systems comprising the GASTROINTESTINAL, LYMPHORETICULAR, and MUSCULOSKELETAL systems are unremarkable for the recorded age, sex, and state of preservation.

MICROSCOPIC EXAMINATION:

Vaginal orifice: Vascular congestion; no hemorrhage identified.

Case No: JP3564-00-2564JD

Page 5

Name: Cunningham, Bertie

COPY

DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

FINDINGS:

1. Penetrating gunshot wound to the head:
 - a. Entrance: right frontal scalp.
 - b. Injuries: severe craniocerebral trauma.
 - c. Recovery: small-caliber, deformed lead bullet from brain.
 - d. Path: right to left, downwards and front to back.
 - e. Range of fire: loose contact.
2. Blunt force injuries consisting of contusions of the upper arms and right side of the chest.
3. Early decomposition with extensive postmortem aquatic animal activity.
4. Status post appendectomy, total abdominal hysterectomy and bilateral salpingo-oophorectomy.
5. History of being abducted from a mall, shot with a 22-caliber weapon, and dumped in a river. The body was recovered two days later.

(Continued on next page)

Case No: JP3564-00-2564JD

me: Cunningham, Bertie

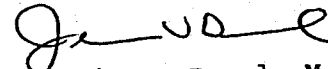
Page 6
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DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES

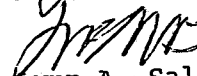
CONCLUSION:

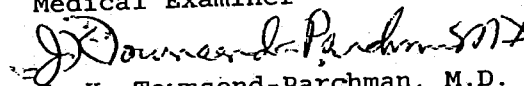
Based upon the investigation report and autopsy findings, it is my opinion that Bertie Cunningham, an 80-year-old white female, died of a gunshot wound to the head. It is possible that she may have survived the gunshot wound to the head for a period of time and, consequently, drowning may have contributed to her death.


MANNER OF DEATH: Homicide.

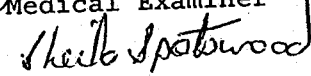

Jennie V. Duval, M.D.
Medical Examiner



Jill E. Urban, M.D.
Medical Examiner

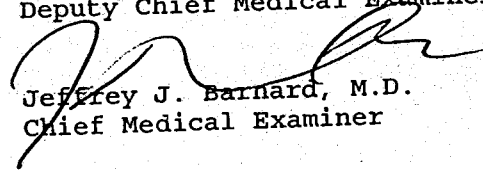

Lynn A. Salzberger, M.D.
Medical Examiner


J. K. Townsend-Parchman, M.D.
Medical Examiner


Joni L. McClain, M.D.
Medical Examiner


Sheila Spotswood, M.D.
Medical Examiner


J. M. Guileyardo, M.D.
Deputy Chief Medical Examiner


Jeffrey J. Barnard, M.D.
Chief Medical Examiner

TOXICOLOGY:

Blood: Alcohols and Acetone - 0.01% ethanol.
Cannabinoid Screen - negative.
Drug Screen - negative.

Vitreous: Alcohols and Acetone - negative.

Protocol typed by Maybelle Doughty

AT DALLAS

Name Cunningham, Bertie

Case No. JP3564-00

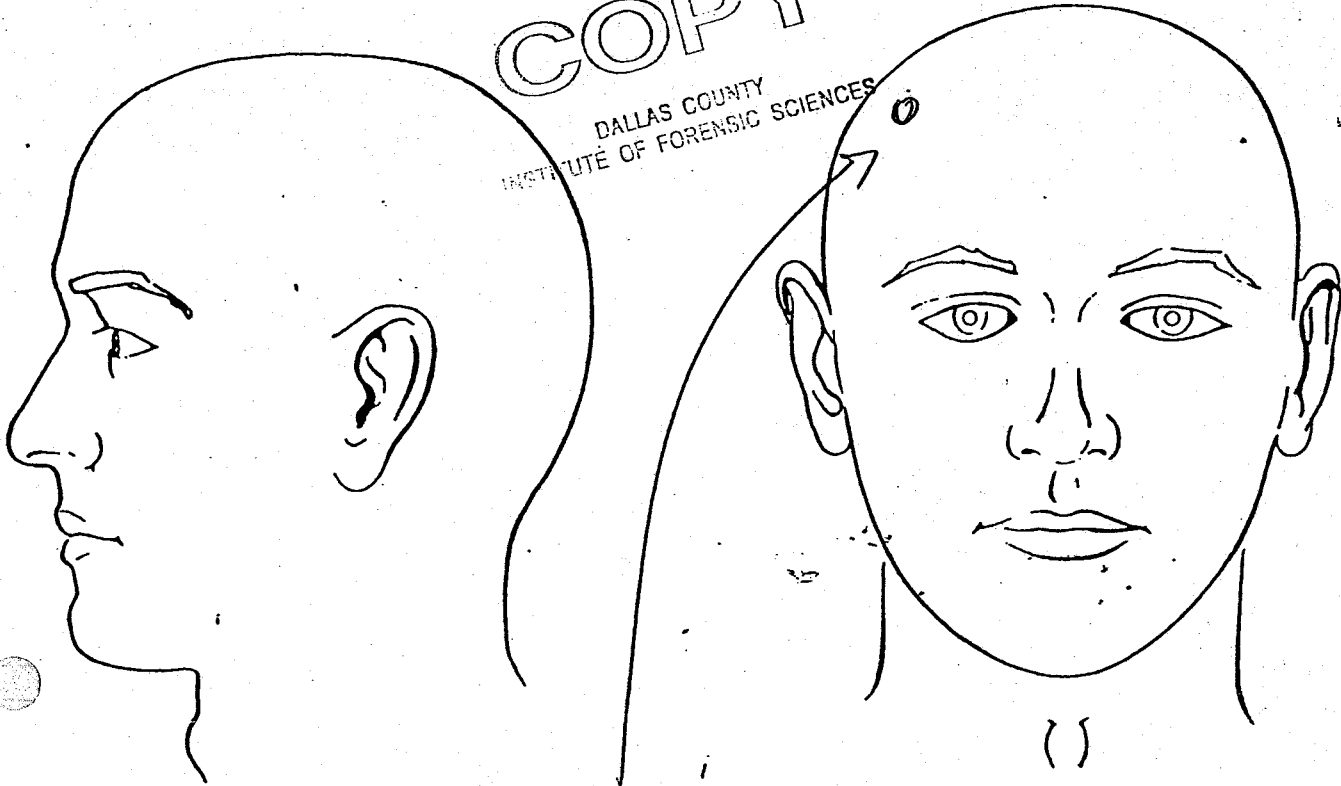
Age 80

Sex F

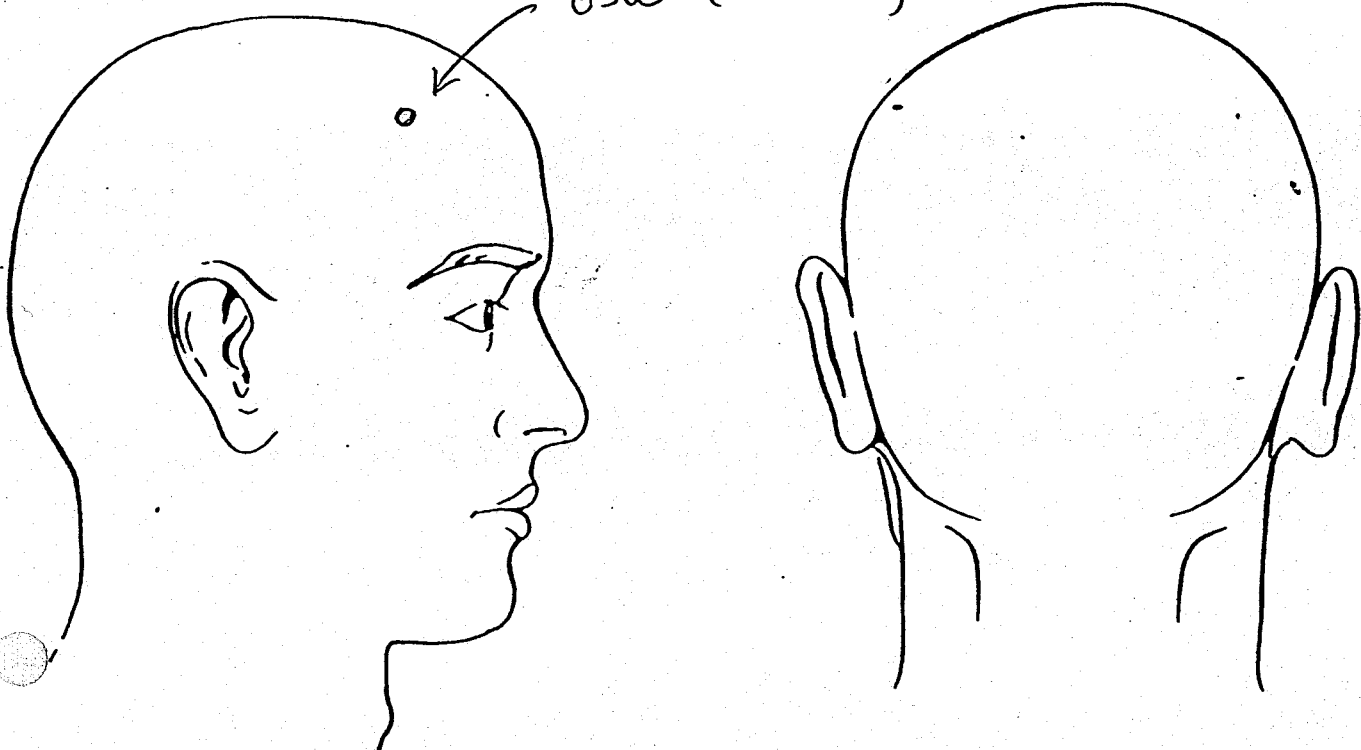
Date 10/6/00

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DALLAS COUNTY
INSTITUTE OF FORENSIC SCIENCES



GSW (entrance)



For report only:

[Signature]

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State's Exhibit Number 55

Autopsy Photograph

(Copy attached)



00-35641

PEYGAD-Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 58

Autopsy Photograph

(Copy attached)



PERGLO, Bayonne, N.J.

STATE'S
EXHIBIT

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State's Exhibit Number 59

Autopsy Photograph

(Copy attached)

3564.00



ENGAD-Bayonne, N.J.

STATE'S
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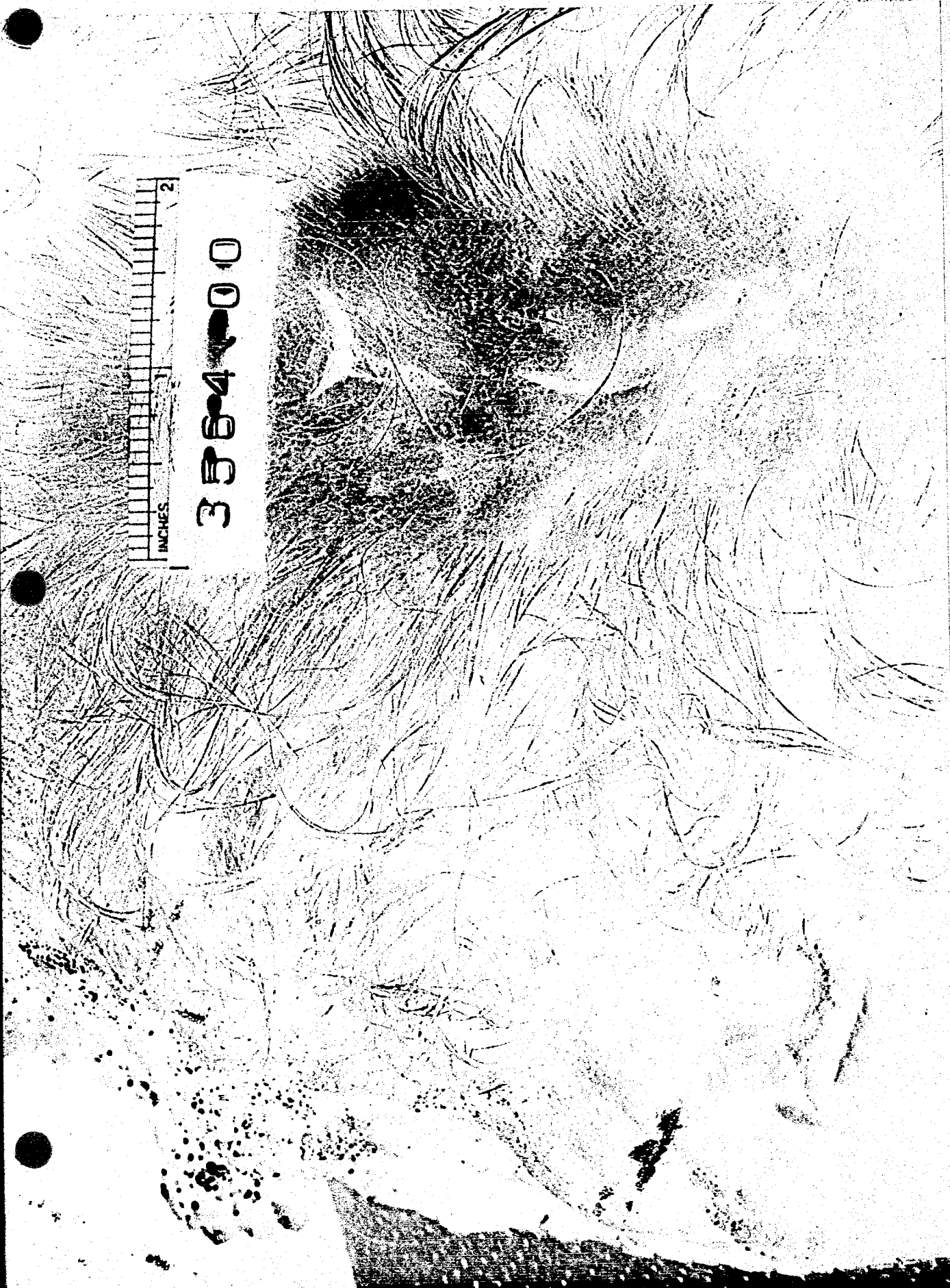
State's Exhibit Number 60

Autopsy Photograph

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State's Exhibit Number 61
Autopsy Photograph
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ENGAD-Bayonne, N.J.

STATE'S
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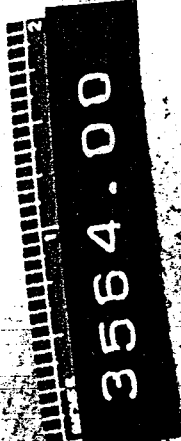
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State's Exhibit Number 62

Autopsy Photograph

(Copy attached)



PERCUT-Bayonne, N.J.

STATE'S
EXHIBIT
62

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State's Exhibit Number 63

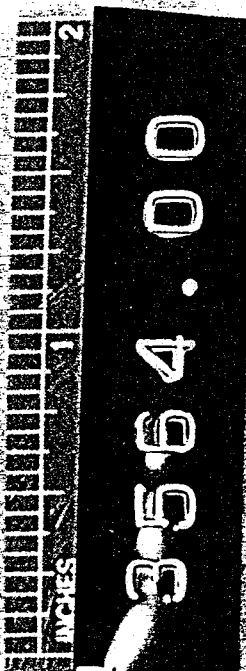
Autopsy Photograph

(Copy attached)

STATES
EXHIBIT

63

PENGAD-Bayonne, N.J.

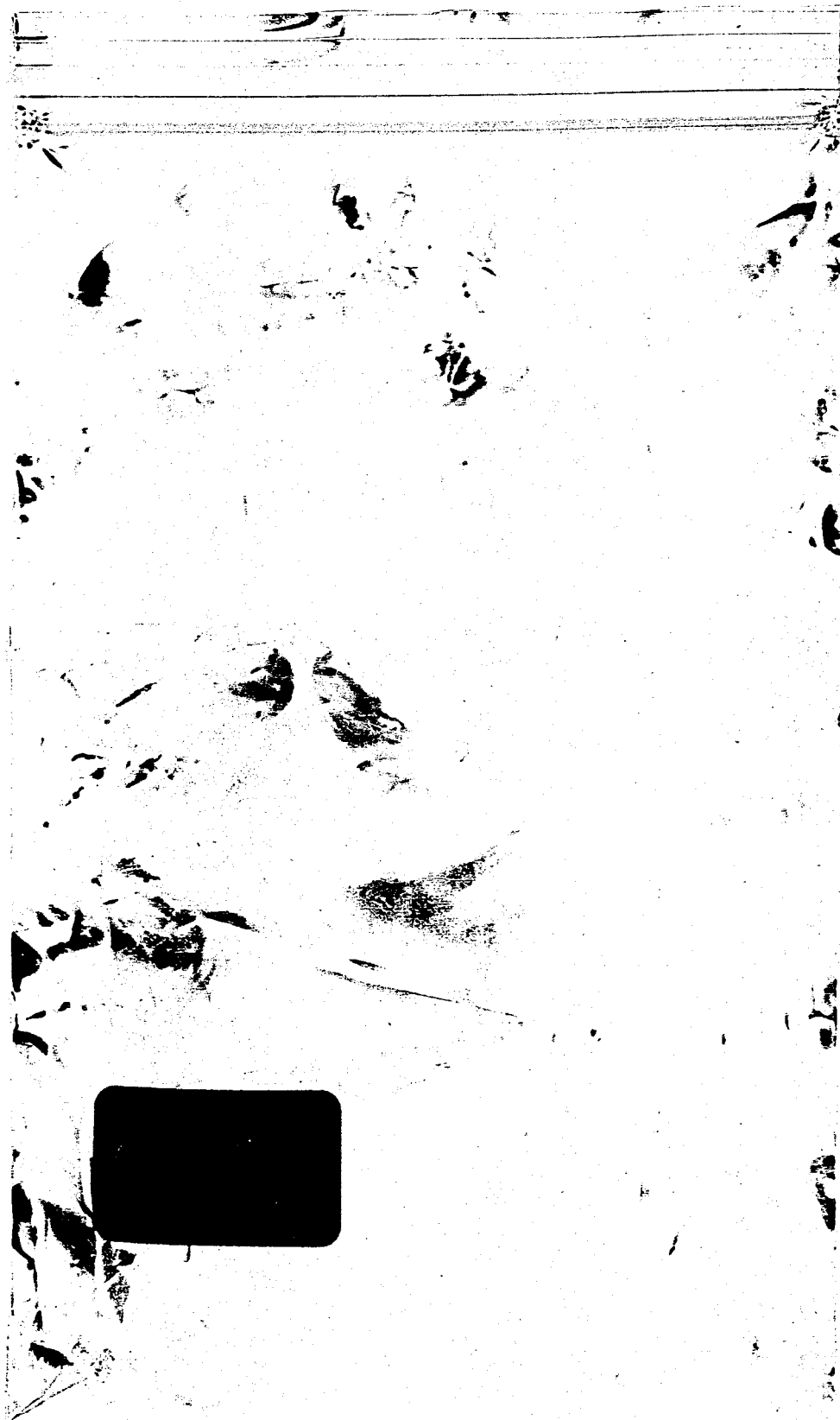


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State's Exhibit Number 63A

Autopsy Slug

(Copy attached)



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State's Exhibit Number 65
Addison Harrington Records
(Copy attached)

F00-02424-M

THE STATE OF TEXAS

V.

JEDIDIAH ISAAC MURPHY

§
§
§
§
§
§

IN THE 194TH JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

AFFIDAVIT

STATE OF TEXAS

COUNTY OF DALLAS

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared

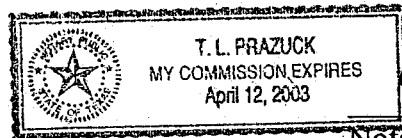
Peter Harrington, who being by me duly sworn, deposed as follows:

"My name is Peter Harrington, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Addison Harrington, Inc. Attached hereto are 10 pages of records from Addison Harrington, Inc. These said 10 pages of records are kept by Addison Harrington, Inc. in the regular course of business, and it was the regular course of business of Addison Harrington, Inc. for an employee or representative of Addison Harrington, Inc. with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."

Pendley
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 29th day of January, 2009,
to certify which witness my hand and seal of office.



T. L. Prazuck
Notary Public in and for

DALLAS County, TEXAS

My Commission Expires:

4-12-03

FAX COVERSHEET

**ADDISON HARRINGTON, INC.**

13370 BRANCH VIEW * SUITE 130 * DALLAS, TEXAS 75234 * PH(972)488-1751 * FX(972)488-1782

Date: 11-15-00Number of pages
including cover sheet: 10**TO:**Invest. Willy Richardson**FROM:**LISA SERVANTES

Phone:

Fax: 214 653-8000/2924

CC:

REMARKS:☐ URGENT☒ FOR YOUR REVIEW☐ REPLY ASAP☐ PLEASE COMMENT

Called wanting information on employee
for ~~auto~~ car.



ADDISON-HARRINGTON, INC.

ACCIDENT INVESTIGATION FORM

Name of Injured Employee Jediah ISSIAE Accident Date: 3-14-97 Time: 11:00
MURPHY
Place of Accident: St Monica Supervisor: Chels
Apparent Nature of Injuries: Broke Left Thumb
at Knuckle

Describe fully how accident/injuries occurred:
(What was the employee doing when injured? Regular job? What went wrong? Proper equipment furnished? Used? Proper training given? Personal protective equipment needed? Being used? Environmental factors? Other appropriate information?)

Pulling String Line Tight & Nail Holding
String Line came out of Form hitting his
Left Thumb.

Name & Address of Witnesses: _____

Primo Jimenez

What can be done to prevent a recurrence of this type of accident?

HAVE SAFETY meeting

Has this been done? Yes If no, when will it be done? _____

How will it be done & by whom? _____

Other Comments? _____

Name of Investigator: Chels Howe Title: Foreman

Date 3-17-97

J. Murphy
Physician
Work Release

COLUMBIA
Medical Center at Terrell

1551 Hwy. 34 S. - Terrell, Texas 75160 (214)-563-7611

Name J. MURPHY Date 3/17/97

Address _____, Texas

*MR. MURPHY MAY RETURN
TO WORK TODAY.*

REFILL
NON-REP

TROY L. MILLER, MD
DEA - BM1397505
DPS - 30081928 TX LIC - J2688

T. L. Miller M.D.
Product Selection
Permitted

Dispense As Written M.D.

Reg. No. _____

RMH ENTERPRISES, INC.
13370 BRANCH VIEW, SUITE 130C
DALLAS, TEXAS 75234
(972) 488-1751

43-1465

APPLICATION FOR EMPLOYMENT

DATE: 12-28-96

NAME: MURPHY JERIDIAH ISAAC (Last name first)

DATE OF BIRTH: 09-01-75

ADDRESS: 6305 FM 429 (City, State, Zip Code)

PHONE NUMBER: (903) 873-2215 SOCIAL SECURITY NUMBER: 456-71-2610

DRIVERS LICENSE OR I.D. NUMBER, STATE ISSUED, EXPIRATION DATE
12468174 97

WORK EXPERIENCE

Company Name & Phone No.	Duties	Supervisor
HEK	FORKLIFT	DON MYERS
FRASIER INDUSTRIES	FORKLIFT	RODNEY BROWN
SMITH BLAIR	CRANE	MIKE PHILLIPS

REFERENCES: Name	Phone No.	Occupation
BILLY COURTNEY	(803) 896-1220	CON. WORKER
LOGAN CRAFT	903-873-2215	FORMAN TC1

**IN CASE OF EMERGENCY NOTIFY: HOPE ABBOTT 214-962-7443
Name and phone number

=====

RMH ENTERPRISES, INC. HIRING PRIORITY IS AS FOLLOWS:

Applicant was hired because:

- A. Current employees of the company _____
- B. Past employees with proven safety, attendance, and work attendance. _____
- C. Applicants recommended by current supervisors. _____
- D. Applicants recommended by current employees. _____
- E. Unknown applicants. _____

JOB CLASSIFICATION: _____

RATE OF PAY \$

7.00 per hour

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE.** It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification.

To be completed and signed by employee at the time employment begins

Print Name: Last <u>MURPHY</u>	First <u>JEDIDIAH</u>	Middle Initial <u>ISAAC</u>	Maiden Name
Address (Street Name and Number) <u>900 EAST SOUTH</u>		Apt. #	Date of Birth (month/day/year) <u>09-01-75</u>
City <u>WILLS POINT</u>	State <u>TX</u>	Zip Code <u>75169</u>	Social Security # <u>456-71-2610</u>

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

Employee's Signature Ray Moore

I attest, under penalty of perjury, that I am (check one of the following):
☒ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A)
☐ An alien authorized to work until 1/1/ (Alien # or Admission #)

Date (month/day/year) 1-29-97

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification.

To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		<u>TX Drivers License</u>		<u>Social Security Card</u>
Issuing authority: _____		<u>TX Dept of Public Safety</u>		<u>US Dept of Health</u>
Document #: _____		<u>12468174</u>		<u>456-71-2610</u>
Expiration Date (if any): <u>1/1/</u>		<u>1/1/</u>		<u>1/1/</u>
Document #: _____				
Expiration Date (if any): <u>1/1/</u>				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) 1/1/ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative <u>Ray Moore</u>	Print Name <u>RAY MOORE</u>	Title <u>FOREMAN</u>
Business or Organization Name <u>RMH ENTERPRISES, INC.</u>	Address (Street Name and Number, City, State, Zip Code) <u>13370 BRANCH VIEW, SUITE 130C, DALLAS, TEXAS 75234</u>	Date (month/day/year) <u>1/29/97</u>

Section 3. Updating and Reverification.

To be completed and signed by employer

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____	Document #: _____
Expiration Date (if any): <u>1/1/</u>	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

Form W-4 (1997)**Want More Money in Your Paycheck?**

If you expect to be able to take the earned income credit for 1997 and a child lives with you, you may be able to have part of the credit added to your take-home pay. For details, get Form W-5 from your employer.

Purpose. Complete Form W-4 so that your employer can withhold the correct amount of Federal income tax from your pay. Form W-4 may be completed electronically, if your employer has an electronic system. Because your tax situation may change, you may want to refigure your withholding each year.

Exemption From Withholding. Read line 7 of the certificate below to see if you can claim exempt status. If exempt, only complete lines 1, 2, 3, 4, 7, and sign the form to validate it. No Federal income tax will be withheld from your pay. Your exemption expires February 17, 1998.

Note: You cannot claim exemption from withholding if (1) your income exceeds \$650 and includes unearned income (e.g., interest and dividends) and (2) another person can claim you as a dependent on their tax return.

Basic Instructions. If you are not exempt, complete the Personal Allowances Worksheet. Additional worksheets are on page 2 so you can adjust your withholding allowances based on itemized deductions, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply to your situation. The worksheets will help you figure the number of withholding allowances you are entitled to claim. However, you may claim fewer allowances than this.

Head of Household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals.

Nonwage Income. If you have a large amount of nonwage income, such as interest or dividends, you should consider making

estimated tax payments using Form 1040-ES. Otherwise, you may find that you owe additional tax at the end of the year.

Two Earners/Two Jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one W-4. This total should be divided among all jobs. Your withholding will usually be most accurate when all allowances are claimed on the W-4 filed for the highest paying job and zero allowances are claimed for the others.

Check Your Withholding. After your W-4 takes effect, use Pub. 919, Is My Withholding Correct for 1997?, to see how the dollar amount you are having withheld compares to your estimated total annual tax. Get Pub. 919 especially if you used the Two-Earner/Two-Job Worksheet and your earnings exceed \$150,000 (Single) or \$200,000 (Married). To order Pub. 919, call 1-800-829-3676. Check your telephone directory for the IRS assistance number for further help.

Sign This Form. Form W-4 is not considered valid unless you sign it.

Personal Allowances Worksheet

- A Enter "1" for yourself if no one else can claim you as a dependent **A** 1
- B Enter "1" if:
 • You are single and have only one job; or
 • You are married, have only one job, and your spouse does not work; or
 • Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less. **B** 1
- C Enter "1" for your spouse. But, you may choose to enter -0- if you are married and have either a working spouse or more than one job (this may help you avoid having too little tax withheld) **C** 1
- D Enter number of dependents (other than your spouse or yourself) you will claim on your tax return **D** 1
- E Enter "1" if you will file as head of household on your tax return (see conditions under Head of Household above) **E** 1
- F Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit **F** 1
- G Add lines A through F and enter total here. Note: This amount may be different from the number of exemptions you claim on your return **G** 1
- For accuracy, complete all worksheets that apply.
 • If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2.
 • If you are single and have more than one job and your combined earnings from all jobs exceed \$32,000 OR if you are married and have a working spouse or more than one job, and the combined earnings from all jobs exceed \$55,000, see the Two-Earner/Two-Job Worksheet on page 2 if you want to avoid having too little tax withheld.
 • If neither of the above situations applies, stop here and enter the number from line G on line 5 of Form W-4 below.

..... Cut here and give the certificate to your employer. Keep the top portion for your records.

Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate ▶ For Privacy Act and Paperwork Reduction Act Notice, see reverse.		OMB No. 1545-0010 1997
1 Type or print your first name and middle initial <u>DEIDIAN I</u>		Last name <u>MURPHY</u>		2 Your social security number <u>4156 71 2610</u>
Home address (number and street or rural route) <u>900 EAST SOUTH COMMERCE</u>		3 <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.		
City or town, state, and ZIP code <u>WILLS POINT TX 75169</u>		4 If your last name differs from that on your social security card, check here and call 1-800-772-1213 for a new card <input type="checkbox"/>		
5 Total number of allowances you are claiming (from line G above or from the worksheets on page 2 if they apply)		6 Additional amount, if any, you want withheld from each paycheck		5 <u>3</u> 6 \$
7 I claim exemption from withholding for 1997, and I certify that I meet BOTH of the following conditions for exemption: • Last year I had a right to a refund of ALL Federal income tax withheld because I had NO tax liability; AND • This year I expect a refund of ALL Federal income tax withheld because I expect to have NO tax liability. If you meet both conditions, enter "EXEMPT" here ▶ <u>7</u>				
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.				
Employee's signature ▶ <u>Deidian Murphy</u>		Date ▶ <u>1-29</u>		1997
8 Employer's name and address (Employer: Complete 8 and 10 only if sending to the IRS)		9 Office code (optional)	10 Employer identification number	

Form W-4 (1996)**Want More Money in Your Paycheck?**

If you expect to be able to take the earned income credit for 1996 and a child lives with you, you may be able to have part of the credit added to your take-home pay. For details, get Form W-5 from your employer.

Purpose. Complete Form W-4 so that your employer can withhold the correct amount of Federal income tax from your pay. Because your tax situation may change, you may want to refigure your withholding each year.

Exemption From Withholding. Read line 7 of the certificate below to see if you can claim exempt status. If exempt, only complete lines 1, 2, 3, 4, 7, and sign the form to validate it. No Federal income tax will be withheld from your pay. Your exemption expires February 18, 1997.

Note: You cannot claim exemption from withholding if (1) your income exceeds \$650

and includes unearned income (e.g., interest and dividends) and (2) another person can claim you as a dependent on their tax return.

Basic Instructions. If you are not exempt, complete the Personal Allowances Worksheet. Additional worksheets are on page 2 so you can adjust your withholding allowances based on itemized deductions, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply to your situation. The worksheets will help you figure the number of withholding allowances you are entitled to claim. However, you may claim fewer allowances than this.

Head of Household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, you should consider making estimated tax payments using Form 1040-ES.

Otherwise, you may find that you owe additional tax at the end of the year.

Two Earners/Two Jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one W-4. This total should be divided among all jobs. Your withholding will usually be most accurate when all allowances are claimed on the W-4 filed for the highest paying job and zero allowances are claimed for the others.

Check Your Withholding. After your W-4 takes effect, use Pub. 919, Is My Withholding Correct for 1996?, to see how the dollar amount you are having withheld compares to your estimated total annual tax. Get Pub. 919 especially if you used the Two Earner/Two Job Worksheet and your earnings exceed \$150,000 (Single) or \$200,000 (Married). To order Pub. 919, call 1-800-829-3676. Check your telephone directory for the IRS assistance number for further help.

Sign This Form. Form W-4 is not considered valid unless you sign it.

Personal Allowances Worksheet

A Enter "1" for yourself if no one else can claim you as a dependent	A <u>1</u>
B Enter "1" if: <ul style="list-style-type: none"> • You are single and have only one job; or • You are married, have only one job, and your spouse does not work; or • Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less. 	B <u> </u>
C Enter "1" for your spouse. But, you may choose to enter -0- if you are married and have either a working spouse or more than one job (this may help you avoid having too little tax withheld)	C <u> </u>
D Enter number of dependents (other than your spouse or yourself) you will claim on your tax return	D <u>2</u>
E Enter "1" if you will file as head of household on your tax return (see conditions under Head of Household above)	E <u> </u>
F Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit	F <u> </u>
G Add lines A through F and enter total here. Note: This amount may be different from the number of exemptions you claim on your return	G <u>3</u>

For accuracy, do all worksheets that apply.

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2.
- If you are single and have more than one job and your combined earnings from all jobs exceed \$30,000 OR if you are married and have a working spouse or more than one job, and the combined earnings from all jobs exceed \$50,000, see the Two-Earner/Two-Job Worksheet on page 2 if you want to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line G on line 5 of Form W-4 below.

Cut here and give the certificate to your employer. Keep the top portion for your records.

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Allowance Certificate	OMB No. 1545-0010 1996
► For Privacy Act and Paperwork Reduction Act Notice, see reverse.		
1. Type or print your first name and middle initial <u>JEDIDIAH</u>	Last name <u>MURPHY</u>	2. Your social security number <u>456 71 2610</u>
Home address (number and street or rural route) <u>6305 FM 429</u>		3. <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.
City or town, state, and ZIP code <u>KAUFMAN TX 75142</u>		4. If your last name differs from that on your social security card, check here and call 1-800-772-1213 for a new card <input type="checkbox"/>
5. Total number of allowances you are claiming (from line G above or from the worksheets on page 2 if they apply)	5 <u>3</u>	
6. Additional amount, if any, you want withheld from each paycheck	6 \$ <u> </u>	
7. I claim exemption from withholding for 1996 and I certify that I meet BOTH of the following conditions for exemption: <ul style="list-style-type: none"> • Last year I had a right to a refund of ALL Federal income tax withheld because I had NO tax liability; AND • This year I expect a refund of ALL Federal income tax withheld because I expect to have NO tax liability. If you meet both conditions, enter "EXEMPT" here <u> </u>		
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.		
Employee's signature ► <u>Jedidiah Murphy</u>	Date ► <u>12-28-</u>	19 <u>96</u>
8. Employer's name and address (Employer: Complete 8 and 10 only if sending to the IRS)	9. Office code (optional)	10. Employer identification number

U.S. Department of Justice
Immigration and Naturalization Service

Case 3:10-cv-00167-M Document 42-13 Filed 05/05/10 Page 455 of 546 PageID 8367

Form No. I-9 (Rev. 11-15-96)
Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE.** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins

Print Name: Last <u>MURPHY</u>	First <u>JERIDIAN</u>	Middle Initial <u>I</u>	Maiden Name
Address (Street Name and Number) <u>6303 FM 429</u>		Apt. #	Date of Birth (month/day/year) <u>08-01-75</u>
City <u>KATY, TEXAS</u>	State <u>TX</u>	Zip Code <u>75142</u>	Social Security # <u>456-71-2610</u>

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☒ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A _____)
☐ An alien authorized to work until ____/____/____ (Alien # or Admission # _____)

Employee's Signature Jeridian Murphy Date (month/day/year) 12-28-96

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, the document(s)

List A	OR	List B	AND	List C
Document title: _____		<u>Driver's License</u>		<u>Social Security Card</u>
Issuing authority: _____		<u>Texas Dept. of PS</u>		<u>US Dep Health</u>
Document #: _____		<u>124 68 124</u>		<u>456-71-2610</u>
Expiration Date (if any): ____/____/____		<u>9/1/97</u>		<u>1/1/</u>
Document #: _____				
Expiration Date (if any): ____/____/____				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) ____/____/____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative <u>Charles Flowers</u>	Print Name <u>Charles Flowers</u>	Title <u>Foreman</u>
Business or Organization Name <u>RMH ENTERPRISES, INC.</u>		Date (month/day/year) <u>12/28/96</u>
Address (Street Name and Number, City, State, Zip Code) <u>13370 BRANCH VIEW, SUITE 130C, DALLAS, TEXAS 75234</u>		

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____	Document #: _____
Expiration Date (if any): ____/____/____	

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

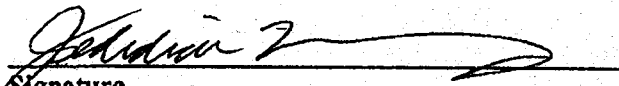
RMH ENTERPRISES, INC.**SAFETY PROGRAM & DRUG TESTING**

I, SEIDIAH MURPHY, have read and understood that RMH ENTERPRISES, INC. drug
EMPLOYEE NAME

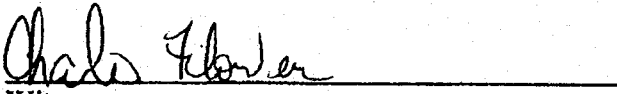
program and agree to observe all rules and regulations set forth in this program. I understand that compliance with the above stated policy is a condition of my employment at RMH ENTERPRISES, INC. I also understand the disciplinary action that will be taken if I have been found to be in violation of this policy or refuse to comply with any of its requirements.

I, SEIDIAH MURPHY, understand that RMH ENTERPRISES, INC. may require
EMPLOYEE NAME

an applicant to take a pre-hire drug test, employment dependent upon test results. It is also my understanding that RMH ENTERPRISES, INC. may require random drug testing, employment dependent upon test results.


Signature

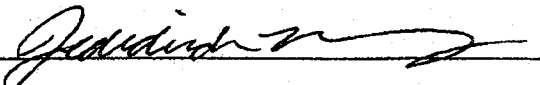
12-28-98
Date


Witness

12-28-98
Date

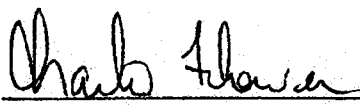
RMH ENTERPRISES, INC.
13370 BRANCH VIEW LANE, SUITE 130C
DALLAS, TEXAS 75234
(972) 488-1751

NOTIFICATION OF WORKERS' COMPENSATION NONSUBSCRIBER

I, , understand that RMH Enterprises, Inc. is a nonsubscriber to the workers' compensation program. However, I do understand that RMH Enterprises, Inc. has a group health program to cover on the job injuries and that said company's insurance company will be notified of my employment so that coverage will begin at once. I also understand that should an injury occur, I am to notify RMH Enterprises, Inc. at once so that they may direct me to their medical provider. I understand that should I follow all guidelines set forth, I may be eligible for weekly income benefits until I am able to return to work.


EMPLOYEE SIGNATURE

12-29-96
DATE


WITNESS

12-29-96
DATE

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State's Exhibit Number 66
Citizen's National Bank Records
(Copy attached)

F00-02424-M

THE STATE OF TEXAS

V.

JEDIDIAH ISAAC MURPHY

§
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§
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§

IN THE 194TH JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

AFFIDAVIT

STATE OF TEXAS

COUNTY OF Van Zandt

§
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BEFORE ME, the undersigned authority, on this day personally appeared

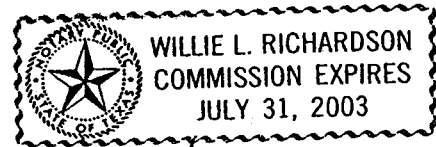
Darlene Morrison, who being by me duly sworn, deposed as follows:

"My name is Darlene Morrison I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Citizen's National Bank. Attached hereto are 4 pages of records from Citizen's National Bank. These said 4 pages of records are kept by Citizen's National Bank in the regular course of business, and it was the regular course of business of Citizen's National Bank for an employee or representative of Citizen's National Bank with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."

Darlene Morrison
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 8 day of Jan, 2000,
to certify which witness my hand and seal of office.



Willie L. Richardson
Notary Public in and for

____ County, _____

My Commission Expires:

7-31-2003

ACCT # 2092115

CHECKING

EMC-0605

DATE OPENED 03-24-00

TODAYS DATE 12-05-00

OWNER 22078-1 IND

JEDIDIAH I MURPHY

IND 456-71-2610 EX

BRANCH CLASS CYCLE STATUS SVC CHG

100 058 010 CL ST OD

10-00

BASIC 2 CHECKING

NSF WV PA OWV CHV RE

7 N N N N N

MEMO BAL

LEDGER BAL

COLLECT BAL

AVAILBL BAL

LAST DEP/PMNT

0.00

0.00

0.00

0.00

09-05

40.00

MONTH	AVERAGE LEDGER	AVERAGE COLLECT	MONTH	AVERAGE LEDGER	AVERAGE COLLECT
00-10	-62.10	-62.10	00-04	194.62	182.07
00-09	18.76	18.76	00-03	228.75	153.75
00-08	86.19	70.24	00-02	0.00	0.00
QTR-1	15.07	9.64	QTR-3	201.81	176.10
00-07	68.42	68.42	00-01	0.00	0.00
00-06	24.14	24.14	99-12	0.00	0.00
00-05	63.85	57.31	99-11	0.00	0.00
QTR-2	52.44	50.24	QTR-4	0.00	0.00
•6-MO•	33.86	30.05	•YEAR•	62.74	55.16

P

(BCF021)

Customer Information File

EMC-0605

CIF # 22078

12-05-00

Name

SSN/TIN No

Home Phone

Work Phone

I JEDIDIAH I MURPHY

456-71-2610

903-873-6959

Street Address

Address Line 2

City

ST Zip

I HOLD MAIL AT BANK

WILLS POINT

TX 75169

Inq Level

Security Code

Key Cust

Emp/Rel

Other Svcs

Profit

40

N

N

Y

Appl

Acct #

Rel/Stt

Memo Bal Note/Title

Cyc C N1 /N2 /Add

DDA-058 2092115

OW/CL

0.00

010 1 1 1

CITIZENS NATIONAL BANK
500 N 4TH STREET
WILLS POINT TX 75169
(903) 873-4157

PRIMARY ACCT ENCLOSURES
DDA-2092115 0

ON LINE REQUEST CUSTOMER NUMBER PAGE NO

JEDIDIAH I MURPHY
HOLD MAIL AT BANK
WILLS POINT TX 75169

22078 1
LAST DATE STATEMENT
DATE DATE
09-17-00 10-15-00

ACCOUNT TYPE AND NUMBER	BALANCE FORWARD	TOTAL DEBITS	TOTAL CREDITS	CLOSING BALANCE
CHECKING 2092115	17.35	88.00	0.00	70.65-

BASIC 2 CHECKING
CHECKING 2092115

DATE	AMOUNT	WITHDRAWALS AND OTHER DEBITS	SVC CH*
09-22	20.00	NONSUFFICIENT FUND FEE	
09-29	10.00	OVERDRAFT FEE	
10-04	20.00	NONSUFFICIENT FUND FEE	
10-06	10.00	OVERDRAFT FEE	
10-11	20.00	NONSUFFICIENT FUND FEE	
10-13	8.00	MAINTENANCE FEE	

AVERAGE BALANCE \$21.58-
AVERAGE COLLECTED BALANCE \$21.58-
MINIMUM BALANCE OF \$62.65- OCCURRED ON 10-11-00

CITIZENS NATIONAL BANK
500 N 4TH STREET
WILLS POINT TX 75169
(903) 873-4157

PRIMARY ACCT ENCLOSURES
DDA-2092115 0

ON LINE REQUEST CUSTOMER NUMBER PAGE NO

JERIDIAH I MURPHY
HOLD MAIL AT BANK
WILLS POINT TX 75169

22078 1

LAST STATEMENT
DATE DATE
10-15-00 11-15-00

ACCOUNT TYPE AND NUMBER	BALANCE FORWARD	TOTAL DEBITS	TOTAL CREDITS	CLOSING BALANCE
CHECKING 2092115	70.65-	20.00	90.65	0.00

BASIC 2 CHECKING
CHECKING 2092115

DATE.....	AMOUNT...	DEPOSITS AND OTHER CREDITS
10-30	90.65	SERVICE CHG REVERSAL
DATE.....	AMOUNT...	WITHDRAWALS AND OTHER DEBITS
10-19	20.00	NONSUFFICIENT FUND FEE

AVERAGE BALANCE \$39.00-
AVERAGE COLLECTED BALANCE \$39.00-
MINIMUM BALANCE OF \$90.65- OCCURRED ON 10-19-00

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State's Exhibit Number 69
Dr. Vandiver's Records
(Copy attached)

F00-02424-M

THE STATE OF TEXAS

V.

JEDIDIAH ISAAC MURPHY

§
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§

IN THE 194TH JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

AFFIDAVIT

STATE OF TEXAS

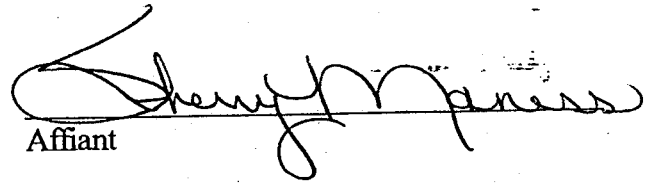
COUNTY OF DALLAS

§
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§

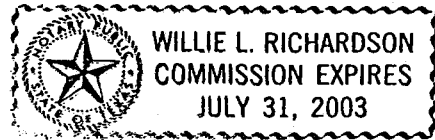
BEFORE ME, the undersigned authority, on this day personally appeared Sherry Maness, who being by me duly sworn, deposed as follows:

"My name is Sherry Maness, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Texas Orthopaedic Associates, L.L.P. Attached hereto are 25 pages of records from Texas Orthopaedic Associates, L.L.P. These said 25 pages of records are kept by Texas Orthopaedic Associates, L.L.P. in the regular course of business, and it was the regular course of business of Texas Orthopaedic Associates, L.L.P. for an employee or representative of Texas Orthopaedic Associates, L.L.P. with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."


Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 17 day of NOV, 2000, to
certify which witness my hand and seal of office.



Notary Public in and for
____ County, _____

My Commission Expires:

7-31-2003

Texas Orthopaedic Associates

Office Use Only: RRS JAR MJC TGS RHB **WRV**

Patient Legal Name: MURPHY - JEDIDIAH ISAAC
 Address: 727 E NORTH COMMERCE #4 Home #: (903) 873-6959
WILLS POINT TX 75169 Date of Birth: 9-1-75 Age: 24
 Social Security #: 456-71-260 Drivers Lic. #: 12468174 Marital Status: DM D W Sex: F ☒
 Employer: GRIFFIN PRODUCTS Work #: (903) 873-6388
 Address: 303 BLUEBIRD PKWY WILLSPOINT TX 75169

Guarantor (if patient is a minor) or Spouse Information or Emergency Contact

Name: _____ Relationship: _____
 DOB: _____ SSN: _____ Home #: () _____ Marital Status: S M D W
 Address: _____
 Employer: _____ Work #: () _____
 Address: _____
 Parent Information: _____
 Name: _____ Relationship: _____ DOB: _____
 Address: _____
 Social Security #: _____ Home #: () _____ Work #: () _____

Family Doctor/PCP: _____ Phone #: () _____ Referred By: _____

Insurance Primary: UNITRIN W/C Phone #: (800) 926-1887

Policy Holder's Name _____ ID#: _____ Group #: _____
 Secondary: _____ Phone #: () _____
 Policy Holder's Name _____ ID#: _____ Group #: _____

HMO
PPO
IN

Information Regarding Medical Problem Date of Injury / Onset: _____

Result of Accident? ☐ Y ☐ N Injured on the Job? ☐ Y * ☐ N In Automobile Accident? ☐ Y ☐ NPlease Circle: Right / Left Finger Hand * IF YES, Tell Receptionist

Wrist Arm Shoulder Elbow Back/Neck Hip Leg Knee Foot Ankle Toe

How did injury occur? Include location where it happened. TRYING TO CATCH TOOL FALL
ID STRUCK MY LEFT THUMB ON THE TABLE,

RELEASE OF INFORMATION AND ASSIGNMENT OF BENEFITS

I authorize Texas Orthopaedic Associates L.L.P. to release to my insurance company any information acquired in the course of my care and permit payment directly to Texas Orthopaedic Associates L.L.P. any benefits due for services rendered. I recognize and accept complete financial responsibility for any balance remaining after the payment of correct benefits.

Jedidiah J. Murphy
 Patient / Guardian Signature

6-29-00
 Date

Jedidiat Z. Murphy

Date of Birth: 9-1-75

Yes _____

No 1

Yes ✓

No _____

Please describe the nature of the illness or injury (what hurts): DISLOCATED

LEFT THUMB

Was this illness or injury sustained in connection with any employment? Yes ✓ No

Was this illness or injury the result of an automobile accident? Yes _____ No ☒

If due to injury or accident, please describe in detail how the injury or accident occurred:

Date of injury, accident or onset of illness: 6-22-05

Where the injury of accident occurred: GRIFFIN PRODUCTS

How the injury or accident occurred: TRYING TO CATCH

TOOK OUT OF THE AIR AND STRUCK
MY ~~THUMB~~ THUMB ON THE EDGE OF TABLE

If due to injury or accident, is a third party responsible? Yes _____ No

If yes, Name of Responsible Party: _____

Telephone Number: _____

Address: _____

I certify the above statements and details are accurate and true to the best of my knowledge.

Jedidiah L. Mercer
Patient/Parent/Guardian's Signature

6-29-20
Date

W/C INSURANCE VERIFICATION FORM

Patient Name: Jedidiah Murphy

Patient referred by: _____ Accl #: _____

Pt. Phone #: 903-873-6959 DOB: 9-1-75 SS #: _____Employed by: Griffin ProductsEmployer's Address: 203 Blue Bird Parkway P.O. Box 90Willis Point, TX 75169

Pt's Occupation: _____ Dept: _____

☐ Requested copy of employer's initial report.DATE OF INJURY: 6-22-00 Employer Phone #: 903 893-6388Pt's Detail of Injury: - Lt Thumb - tendonsCLAIM #: 11160160W/C Carrier: Unitron Prop & CasualtyW/C Address: P.O. Box 655028Dallas Tx 75265 #3ADJUSTER: Chuck Donley PHONE #: 1800 926-1887 X8452Specific Care Approved: ☐ Orthopaedic Consult / Office Visit Bus.☐ X-rays _____☐ Fx Care _____☐ Follow-up Care _____☐ Other _____

Special Notes / Information: _____

Verified by employee: Sylvia Dated: 6-23-00



TEXAS ORTHOPAEDIC ASSOCIATES
MEDICAL HISTORY

Name JERIDIAH I. MURPHY Age 24 Height 5'10" Weight 140

Family Physician _____

Today's Date 6-29-00

Past Medical History

Have you ever had any of the following?	Yes	No		Yes	No
Diabetes	<input type="checkbox"/>	<input type="checkbox"/>	Seizures	<input type="checkbox"/>	<input type="checkbox"/>
Gout	<input type="checkbox"/>	<input type="checkbox"/>	Free Bleeding	<input type="checkbox"/>	<input type="checkbox"/>
High Blood Pressure	<input type="checkbox"/>	<input type="checkbox"/>	Heart Disease	<input type="checkbox"/>	<input type="checkbox"/>
Cancer	<input type="checkbox"/>	<input type="checkbox"/>	Lung Disease	<input type="checkbox"/>	<input type="checkbox"/>
Ulcers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Blood Transfusions	<input type="checkbox"/>	<input type="checkbox"/>
Asthma/Hayfever	<input type="checkbox"/>	<input type="checkbox"/>	Infectious Diseases	<input type="checkbox"/>	<input type="checkbox"/>
Other _____					

Past Surgical History

List any surgery that you have had and approximately what year it was performed.

Operation	Year	Operation	Year
<u>LEFT HAND</u>	<u>96</u>		
<u>APPENDIX</u>	<u>93</u>		
<u>RT LUNG</u>	<u>95</u>		

Medications/Allergies

What medicine do you currently take, how often do you take it, and what is the dosage(if you know)?

Are you allergic to any medicine? ☒ Yes ☐ No Which ones? IODINE

Family History

Is your: Mother alive? ☒ Yes ☐ No Age _____ Illnesses/ Cause of death _____
 Father alive? ☐ Yes ☒ No Age 39 Illnesses/ Cause of death PSYCHOSIS
 How many: Sisters do you have? 5 Any illnesses? NO
 Brothers do you have? 2 Any illnesses? NO
 Which (if any) of the illnesses listed under Past Medical History (above) run in your family?

ALCOHOLISM

Social History

Are you currently: ☒ Single? ☐ Married? ☐ Divorced? ☐ Widowed?
☒ Employed? ☐ Unemployed? ☐ Retired? Occupation WELDER
 Do you: Yes No
 Smoke cigarettes? ☒ ☐ How many packs per day? 1
 Smoke cigars? ☐ ☐
 Chew tobacco? ☐ ☐
 Do you drink alcohol? ☐ ☒ How many drinks per day? _____

Review of Systems

Have you had: Yes No
 Any recent change in bowel habits? ☐ ☒
 Any major changes in your weight? ☐ ☒

(Females only) Are you:

Pregnant? ☐ ☐ Date of last menstrual period? _____
 Having any menstrual irregularities? ☐ ☐

June 30, 2000



Texas Orthopaedic
Associates, L.L.P.

John A. Racanelli, M.D.

Robert R. Scheinberg, M.D.

Michael J. Champine, M.D.

Timothy G. Schacherer, M.D.

Edward H. Blum, M.D.

William R. Vandiver, M.D.

Boby D. Mize, M.D., Ret.

Walnut Hill Lane
Suite 130, F.B. 11
Dallas, Texas 75231
214-750-1207
Fax 214-750-8501

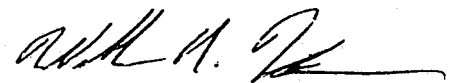
6200 West Parker Road
Suite 510
Plano, Texas 75093
972-373-1138
Fax 972-373-1132

709 West Highway 243
Suite B
Ft. Worth, Texas 76112
817-32-2122
Fax 972-932-2130

To Whom It May Concern -

Jedidiah Murphy suffered a left thumb meta-carpal-phalangeal dislocation while on the job on June 22, 2000. At that time, the joint spontaneously reduced but he ruptured his ulnar collateral ligament which is a very important stabilizer of this joint. Also known as "skier's thumb" or "gamekeeper's thumb", it will not heal without surgery because the ligament edges are not opposed. He needs an open repair. After that he will be in a thumb splint for about 3 weeks - then gentle motion. Unrestricted use of the thumb in about 8-10 weeks.

Thank you,


William R. Vandiver MD

July 20, 2000

RE: MURPHY, Jedidiahi

Jedidiahi comes in for follow-up of open and end repair of his left thumb metacarpal phalangeal joint ulnar collateral ligament. He says he is not having much pain, however, he does have numbness on the ulnar portion of his thumb distal to the incision. His wound is healing well. His stitches were removed and he remains stable to mild stress.

At this point we can only wait for the nerve to recover. It might be shocked by the surgery, however, there is a good chance that it will come back.

In the meantime, Jedidiahi will not be able to do his regular welding work as it takes a lot of fine detail. He will follow-up in the office in one month, but he may be released back to work prior to that if his nerve recovers.


William R. Vandiver, M.D.

WRV/laf

August 17, 2000

RE: MURPHY, Jedidiahi

Jedidiahi is now about six weeks status post left thumb ulnar collateral ligament repair. His main concern and complaint is continued numbness over the ulnar aspect of the thumb. He is concerned about this because of his job and ability to do welding work.

On physical examination, his wound is well healed. He has very good range of motion, however, he does have very slight or no sensation over the medial part of his thumb and some of the palmar pad.

I will now refer Jedidiahi to Dr. Garrison for some EMG studies of the left thumb to see if we can determine the level and/or the severity of the nerve damage. We will see him back as soon as this consult is completed.


William R. Vandiver, M.D.

WRV/laf

October 3, 2000

RE: MURPHY, Jedidiahi

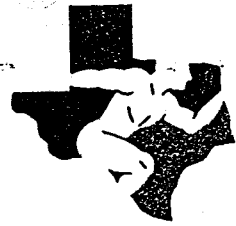
Jedidiahi was scheduled to come in today at 3:30. he did not show up. We will try to contact him for rescheduling.


William R. Vandiver, M.D.

WRV/laf

June 29, 2000

RE: MURPHY, Jedidiah



Texas Orthopaedic
Associates, L.L.P.

John A. Racanelli, M.D.

Robert R. Scheinberg, M.D.

Michael J. Champine, M.D.

Timothy G. Schacherer, M.D.

David H. Blum, M.D.

William R. Vandiver, M.D.

Boby D. Mize, M.D., Ret.

Walnut Hill Lane
Suite 130, LB 11
Dallas, Texas 75231
214-750-1207
Fax 214-750-8501

6200 West Parker Road
Suite 510
Plano, Texas 75093
972-378-1138
Fax 972-378-1132

709 West Highway 243
Suite B
Ft. Worth, Texas 76112
817-212-2122
Fax 817-212-2130

Mr. Murphy is a 24-year-old, white male employed by Griffin Products who on the 21st of June of this year was working and trying to catch a falling tool. He struck his left thumb on the table apparently dislocating it at the metacarpal phalangeal joint. He immediately sought assistance and in the process of trying to brace his hand he apparently spontaneously reduced the thumb. However, shortly after this he experienced quite a bit of swelling about the joint. He was seen subsequently in the Emergency Room in Terrell where x-rays revealed no fracture, no dislocation at the time. He was placed into a splint and told to follow-up here.

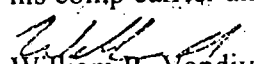
Today he still has quite a bit of discomfort in the thumb. There is still swelling present.

On physical examination with the splint removed, there is quite a bit of swelling about his left thumb metacarpal phalangeal joint. Other than the swelling, there does not appear to be any gross deformity or evidence of recurrent dislocation or subluxation. The area is extremely tender to the touch. However, even with very careful and mild testing of the ligaments he does have an obvious deficiency in his ulnar collateral ligament. Also, there is quite a bit of ecchymosis in this area indicating such an injury. He is not able to actively flex his IP joint. However, this is probably due to pain. However, he is neurovascularly intact in his left thumb distal to the injury.

IMPRESSION:

STATUS POST LEFT THUMB
METACARPAL PHALANGEAL
DISLOCATION WITH SPONTANEOUS
REDUCTION WHILE ON THE JOB WITH A
CLINICALLY OBVIOUS RUPTURE OF THE
ULNAR COLLATERAL LIGAMENT.

PLAN: The natural history of this condition was explained at length to Mr. Murphy. In all likelihood he has a stener lesion where the ruptured ulnar collateral ligament has popped out in front of the adductor aponeurosis, therefore, impeding any possibility of healing. Since he is a manual laborer, I recommended that he get this ligament surgically repaired, as he will have quite a bit of symptomatic instability in the future if he does not. He has agreed with this plan, therefore, we will obtain certification from his comp carrier and schedule him as soon as possible.


William R. Vandiver, M.D.
WRV/laf

MO

TEXAS ORTHOPAEDIC ASSOCIATES
PHONE LOG

Patient Name:

Jedideah Murphy

D.O.B.:

9-1-75

Please date and initial each entry.

Emergency c Dr Garrison Left Thumb 9/7/00 3:00.
101 N. Houston 800 949-8888

10/5/00 Discharge pt - due to arrest. @ Do Not
see pt

JOHN A. RABIN, M.D. TEXAS ORTHOPAEDIC ASSOCIATES, P.C.
 ROBERT R. SCHENBERG, M.D. ORTHOPAEDIC SURGEON
 MICHAEL J. CHAMPINE, M.D. ☐ 8210 Walnut Hill Ln. ☐ 6200 W. Parker Rd. ☒ 709 W. Hwy. 243
 TIMOTHY G. SCHACHERER, M.D. Suite 130 Suite 516 Suite B
 RONALD H. BLUM, M.D. Dallas, TX 75231 Plano, Texas 75093 Kautman, TX 75142
 WILLIAM R. VANDIVER, M.D. 214-750-1207 972-378-1438 972-932-2122

Name Murphy, Jedidiah Date 6/29/00

Address _____ City _____

Reg. No. _____

Presc N-100
Sis 7-11 PO 94-6h phn pain
Disp, 40 (Brt)
Refill x one (1)

DISP

0	4	0
---	---	---

William R. Vandiver M.D. _____ M.D.

Product selection permitted
 REPT. UT. DICT. 1 2 3 4 Times P.R.N. ☐ Non-Rep. ☐ No Call ☐

Texas Orthopaedic Associates, L.L.P.

☐ 8210 Walnut Hill Lane, Ste. 130
Dallas, Texas 75231
214-750-1207

☐ 6200 W. Parker Rd., Ste. 516
Plano, Texas 75093
972-378-1438

☒ 709 W. Hwy. 243, Suite B
Kaufman, Texas 75142
972-932-2122

Date

6/29/00

To Whom It May Concern:

Jedidiah Murphy

is under my care for the treatment of s/p Left thumb
metacarpophalangeal joint dislocation and
ulnar collateral ligament rupture

Patient will require surgical repair of
the above ligament

If you have any questions concerning this patient, please do
not hesitate to contact me.

William R. Vandiver

Physician's Signature

- ☐ John A. Racanelli, M.D.
- ☐ Robert R. Scheinberg, M.D.
- ☐ Michael J. Champine, M.D.
- ☐ Timothy G. Schacherer, M.D.
- ☐ Ronald H. Blum, M.D.
- ☒ William R. Vandiver, M.D.

FORM 104 REV 11/99

Texas Orthopaedic Associates, L.L.P.

☐ 8210 Walnut Hill Lane, Ste. 130
Dallas, Texas 75231
214-750-1207

☐ 6200 W. Parker Rd., Ste. 516
Plano, Texas 75093
972-378-1438

☒ 709 W. Hwy. 243, Suite B
Kaufman, Texas 75142
972-932-2122

Date 8-17-00

To Whom It May Concern:

Jedediah Murphy

is under my care for the treatment of

Collateral ligament left thumb

Patient

patient is to remain off
work. Recommend ERG.

If you have any questions concerning this patient, please do not hesitate to contact me.

William R. Vandiver Physician's Signature

- ☐ John A. Racanelli, M.D.
- ☐ Robert R. Scheinberg, M.D.
- ☐ Michael J. Champine, M.D.
- ☐ Timothy G. Schacherer, M.D.
- ☒ Ronald H. Blum, M.D.
- ☒ William R. Vandiver, M.D.

Texas Orthopaedic Associates, L.L.P.

☐ 8210 Walnut Hill Lane, Ste. 130
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Plano, Texas 75093
972-378-1438

☒ 709 W. Hwy. 243, Suite B
Kaufman, Texas 75142
972-932-2122

Date

9-14-00

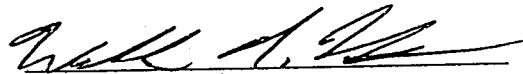
To Whom It May Concern:

Jedidiah Murphy
is under my care for the treatment of left ulnar
collateral ligament

Patient may return to work 9-18-00.

Patient is not to lift greater
than 20 lbs.

If you have any questions concerning this patient, please do
not hesitate to contact me.



Physician's Signature

- ☐ John A. Racanelli, M.D.
- ☐ Robert R. Scheinberg, M.D.
- ☐ Michael J. Champine, M.D.
- ☐ Timothy G. Schacherer, M.D.
- ☐ Ronald H. Blum, M.D.
- ☒ William R. Vandiver, M.D.

Attn: Kristen Adames

FORM 104 REV 11/99

Operation

OPERATIVE REPORT

PATIENT-NAME: MURPHY, JEDIDIAH
MR#: 402372
PHYSICIAN: William R. Vandiver, M.D./ID: 93902
ADMISSION DATE: 7-7-00
OPERATION DATE: 7-7-00

ATTENDING ORTHOPEDIC SURGEON: WILLIAM RICHARD VANDIVER, M.D.

PREOPERATIVE DIAGNOSES: Rupture of the ulnar collateral ligament of the left thumb, metacarpal phalangeal joint.

POSTOPERATIVE DIAGNOSES: Same.

NAME OF OPERATION: Open end-to-end repair of the above ligament.

SURGEON: William R. Vandiver, M.D./ID: 93902

ANESTHESIA: LMA administers by Robert V. Johnston, M.D.
CC: ANESTHESIA SERVICE/ID: 93114

PROCEDURE NOTE: The patient was brought into the Operating Room and placed in a comfortable supine position on the operating table. Once LMA anesthesia had been successfully induced, a tourniquet was placed high in the patient's left arm and the patient's left upper extremity from the bottom end of the tourniquet out to the fingertips was prepped and draped in a routine sterile fashion. The extremity was exsanguinated using a 4 inch Esmarch bandage and the tourniquet was inflated to 220 mm/Hg. A bayonet type incision was made on the dorsal ulnar aspect of the base of the thumb centered over the metacarpal phalangeal joint. Dissection was carefully carried through the subcutaneous fat until the abductor aponeurosis could be seen. The piece of ligament could be seen at the superior end of the piece of aponeurosis. The aponeurosis was split with a pair of scissors. The tendon ends were fairly well approximated once the aponeurosis was split. The repair was carried out using #2-0 Vicryl until a solid repair was achieved. The aponeurosis was repaired back over the ulnar collateral ligament using #4-0 Vicryl and the subcutaneous was also approximated using #4-0 Vicryl. The skin was closed using #4-0 nylon vertical mattress sutures.

A sterile dressing consisting of bacitracin ointment, Adaptic, 4 x 4s and Webril was placed. The tourniquet was taken down. Tourniquet time was 33 minutes. After this, a short arm thumb spica cast was applied using 2 inch fiberglass rolls.

PATIENT NAME: MURPHY, JEDIDIAH
MR#: 402372
PHYSICIAN: William R. Vandiver, M.D./ID: 93902

ESTIMATED BLOOD LOSS: Minimal.

There were no specimens and no complications.

Before placing the cast, the patient's joint was stressed and it was seen to be stable now as it was, as the right side was during the preoperative examination.

The patient was taken to the Post Anesthesia Care Unit in stable condition.

William R. Vandiver, M.D./ID: 93902

TM

DD: 07-07-00

DI: 07-07-00

(END OF REPORT)

Robert A. Pike
Physician Signature

7/5/00
Date

446350 (3/98)



Presbyterian
Hospital of Kaufman
A Member of Presbyterian Healthcare System

Murphy

DISCLOSURE AND CONSENT
MEDICAL AND SURGICAL PROCEDURES

TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.

I (we) voluntarily request Dr. William R. Vandine, MD
as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me by my physician as:

Collateral Ligament Ruptured Left Thumb/Hand
I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures:

I (we) understand that my physician may discover other or different conditions which require additional or different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure: **fever, transfusion reactions which may include kidney failure or anemia, heart failure, hepatitis, AIDS (Acquired immune deficiency syndrome) and other infections.**

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure:

Infection, possible need for further surgery.

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) certify this form has been fully explained to me, that I (we) have read it or have had it read to me, that the blank spaces have been filled in, and that I (we) understand its contents.

DATE: _____ TIME: _____ am
pm
I (We) have sufficient information to give this informed consent.

PATIENT/Other legally responsible person sign

I have explained the risk, benefits, and alternatives and the patient/family understands and agrees to the procedure.

William R. Vandine 7/5/00
Surgeon Sign Date Time

WITNESS:

Name: _____

Address: _____

City, State, Zip: _____

DATE: _____ TIME: _____ am
pm
I (We) have sufficient information to give this informed consent.

PATIENT/Other legally responsible person sign

I have explained the risk, benefits, and alternatives and the patient/family understands and agrees to the anesthesia.

Anesthesiologist / CRNA Sign Date Time

WITNESS:

Name: _____

Address: _____

City, State, Zip: _____

SOUTHWEST MEDICAL EXAMINERS, INC.
7502 Greenville Avenue
Suite 600
Dallas, Texas 75231

(214) 368-4963
(888) 336-8759
Fax (214) 750-5775
Fax (877) 768-5439

June 30, 2000

Trinity Universal Insurance
Chuck Donley
P.O. Box 655028
Dallas, Texas 75265-5028

DR. William R. Dandiver
709 West Highway 243, Suite B
Kaufman, Texas 75142

Presbyterian Hospital of Kaufman
843 West Highway 243
Kaufman, Texas 75142

Jedidiah Murphy
727 East North Commerce, # 4
Wills Point, Texas 75169

Employee: Jedidiah Murphy
Date of Loss: 06/22/00
SSN: 456-71-2610
Claim Number: 11160160

This is to confirm that on 06/30/00 we approved preauthorization of the following health care treatment(s) and/or service(s) as required under Title 28, Part II, Chapter 134.600, Subchapter G of the Texas Administrative Code:

Outpatient surgery to be performed 07/07/00:
Repair Ulnar Collateral Ligament Tear Left Thumb

The assigned preauthorization number is TU0050A. Please use this number on all correspondence and billing forms regarding this injured employee.

This certification does not guarantee payment. Compensability can be determined only by your adjuster and the determination of actual benefits can only be made upon receipt of the completed claim. Payment for the services received is subject to statutory limitations, eligibility, compensability, as well as, medical necessity.

Any questions or changes should be directed to the preauthorization department of Southwest Medical Examiners at 888-336-8759.

URA NUMBER: 05091

Sincerely,

Kim Risk, R.N.

Kim Risk, R.N.

Name: MURPHY, JEDIDIAH
Location: DSUR Room: DSUR-
or: VANDIVER, WILLIAM R
L... #: 0093902

Pt. Type: X
Med Rec #: (00002)0000-40-23-72
Acct #: 120-0157667

HEMATOLOGY

06JUL00

PROCEDURE	Complete Blood Count	UNITS
WBC . x10 ³ /uL	3.6 - 11.1	6.3
RBC x10 ⁶ /uL	4.27 - 5.61	5.06
HGB g/dL	12.9 - 17.3	15.5
HCT %	37.6 - 50.5	45.9
MCV fl	79.3 - 97.3	90.7
MCH pg	26.8 - 33.4	30.5
MCHC g/dL	32.9 - 35.5	33.7
RDW %	11.5 - 15.0	12.3
PLT x10 ³ /uL	130 - 400	256
MPV fl	7.5 - 10.7	8.3
NL %	43.2 - 71.5	46.4
LYMPH %	16.8 - 43.4	38.8
MONO %	0.0 - 12.4	9.9
EOS %	0.0 - 7.8	4.2
NE# x10 ³ /uL	1.9 - 7.2	3.0
LYMPH# x10 ³ /uL	1.1 - 2.7	2.4
MONO# x10 ³ /uL	0.0 - 0.8	0.6
E# x10 ³ /uL	0.0 - 0.5	0.3
...# x10 ³ /uL	0.0 - 0.1	0.0

REHABILITATION MEDICAL SPECIALISTS OF DALLAS, P.A.

JAMES S. GARRISON, M.D.



DONALD M. MCPHAUL, M.D.

F A X

TO FAX: 972-962-2112

DATE: 9/12/00

ATTENTION: Sylvia / Dr Vandier

FROM: Ann ☐Mary Gayle ☒ @ Fax 214-987-0739

If there are any difficulties with this transmission, please call 214-987-1460 (Dallas) or
1-800-949-888 (Kaufman and surrounding area).

RE:

Jedidiah's EMG report —
if any questions, Dr G will
be in office all afternoon —
then OOT thru Sunday

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 5



REHABILITATION MEDICAL SPECIALISTS OF DALLAS, P.A.

JAMES S. GARRISON, M.D.



DONALD M. MCPHAUL, M.D.

September 7, 2000

William Vandiver, M.D.
709 W. Hwy 243, Suite B
Kaufman, TX 75142

Re: Jedidiah Murphy
Date of Injury: 6/22/00
Claim No: 11160160

Dear Dr. Vandiver:

This letter is to give you a report on your patient Jim Murphy, whom I saw in consultation September 7, 2000 for electrodiagnostic studies of the left thumb. This is a 25-year-old man with the chief complaint of pain, stiffness and numbness in the left thumb. He explained that he was injured at work June 22, 2000 when he struck the left thumb against a table leg while trying to catch some falling equipment. He went to surgery for repair of an avulsed ulnar collateral ligament of the thumb. Afterward, he noticed numbness over part of the thumb. The numbness persists. He has had no previous injury to the left thumb. He does have a past history of gunshot wound to the left hand, with nerve injury resulting in a loss of sensation over the whole hand except the thumb. He reports that he still has impaired sensation in the second, third, fourth and fifth fingers. He had several surgical procedures for repair and reconstruction of the left hand at that time.

On examination, a healed surgical incision was noted over the ulnar aspect of the left thumb MP joint. There was a Tinel sign to percussion over the cutaneous sensory nerve on the ulnar aspect of the thumb proximal to the healed incision scar. There was some pain and restriction of motion of the left thumb. Motor function of hand intrinsic muscles appeared to be intact.

Electromyography was done to the left abductor pollicis brevis, first dorsal interosseous and extensor indicis proprius muscles. The muscles examined had normal insertional activity, no abnormal spontaneous electrical activity and normal motor unit action potentials with respect to amplitude, configuration and recruitment.

Jedidiah Murphy
September 7, 2000
Dr. Vandiver
Page 2

Nerve conduction studies were limited to sensory conduction studies of the left thumb; as authorized. The left median nerve orthodromic sensory latency from the thumb to the wrist was 2.7 milliseconds, with a sensory nerve action potential amplitude of 32.1 microvolts. The left median nerve antidromic sensory latency from wrist to thumb was 2.7 milliseconds, with a sensory nerve action potential amplitude of 20.5 microvolts. The radial nerve sensory action potential was unobtainable in the thumb when ring-recording electrodes were placed on the thumb and the radial nerve was stimulated at the wrist. In response to electrical stimulation via ring electrodes around the thumb, a nerve action potential was obtained over the radial nerve at the wrist, but the potential was low in amplitude with the same latency and configuration as the median sensory nerve action potential. Therefore, this response may have been due to volume conduction of the nerve action potential from the median nerve in the wrist rather than a radial nerve action potential.

- IMPRESSION:
1. Normal EMG findings in the muscles tested. No evidence of nerve injury was seen in the EMG examination.
 2. Normal nerve conduction studies of the left median nerve sensory branch to the thumb.
 3. The radial nerve sensory action potential was unobtainable in the thumb when ring-recording electrodes were placed on the thumb and the radial nerve was stimulated at the wrist. These findings are consistent with conduction block of the radial cutaneous sensory nerve to the thumb.

Thank you for asking me to see Jedidiah Murphy. If I can assist you further in his care, please call.

Sincerely,

James S. Garrison, M.D.
JSG/bf

Rehabilitation Medical Specialists
of Dallas, P.A.
8210 Walnut Hill Lane, Suite 614
Dallas, Texas 75231

Patient: Murphy, Jedidiah
Ref. M.D.: Dr. Vandiver

Test Date: 00/09/07

Sensory Nerve Study

Left Med/Uln/Rad Nerve

Rec Site: Wrist	Lat (ms)	Pk Lat (ms)	Amp (uV)	Dist (mm)
-----------------	----------	-------------	----------	-----------

STIM SITE

R Thumb	2.2	2.7	3.4	100
M Thumb	2.2	2.7	32.1	100

NOTES: Stim site: ring electrodes on thumb. Radial response may be volume conduction from median nerve

Left Med/Uln/Rad Nerve

Stim Site: Wrist	Lat (ms)	Pk Lat (ms)	Amp (uV)	Dist (mm)
------------------	----------	-------------	----------	-----------

REC SITE

R Thumb	NR			100
M Thumb	2.2	2.7	20.5	100

NOTES: antidromic stimulation at wrist, recording ring electrodes on thumb

EMG Study

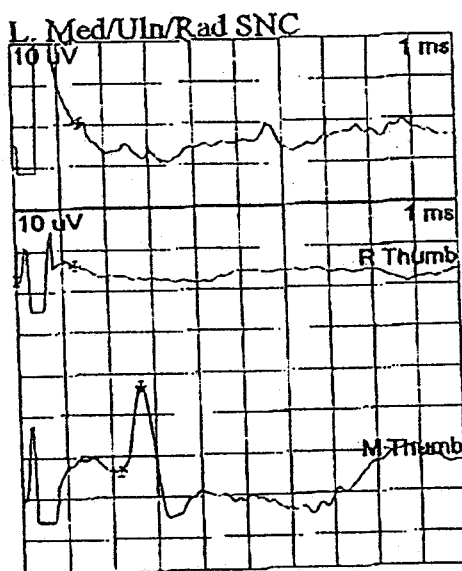
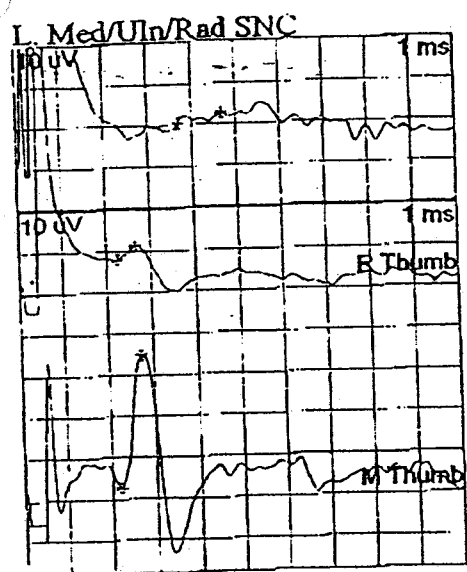
Name	Ins Act	Fibs	PSW	Fascics	Polyph	MU Amp	MU Dur	Config	Pattern	Int Pat	Recruit
L. Abd. Pol. Br.	Normal										
L. Dors. Int. 1	Normal										
L. Ext. Ind. Pro.	Normal										

Impression

1. Normal EMG findings in the muscles tested. No evidence of nerve injury affecting the last motor branch of the left median, radial, or ulnar nerves was seen in the EMG examination
2. Normal nerve conduction studies of the left median nerve sensory branch to the thumb.
3. The radial nerve sensory action potential was unobtainable in the thumb when ring recording electrodes were placed on the thumb and the radial nerve was stimulated at the wrist.
4. In response to electrical stimulation via ring electrodes around the thumb, a nerve action potential was obtained over the radial nerve at the wrist, but the potential was low in amplitude, with the same latency and configuration as the median sensory nerve action potential. This response may have been due to volume conduction of the nerve action potential from the nearby median nerve in the wrist.

Patient: Murphy, Jedidiah

00/09/07



Medical Center at Terrell

NAME: MURPHY, JEDIDIAH ISAAC
ATTENDING DR: Farnes, Stephen MD
DOB: 09/01/1975 AGE: 24 SEX: M
ACCT: TL0021110687 LOC: TL.ER
EXAM DATE: 06/22/2000 STATUS: DEP ER
RADIOLOGY NO:
UNIT NO: TL00051795

EXAMS:

REASON FOR EXAM:

000076390 HAND PA/AP, LAT & OBLIQUE R/O FRACTURE

CLINICAL HISTORY: HYPEREXTENDED HIS LEFT THUMB WITH PAIN.

Three views of the left hand dated 6/22/00, reviewed without a prior study for comparison, show soft tissue swelling involving the MC-P articulation of the thumb. Encircling metal rings involve the fourth digit. A metallic wrist band involves the wrist.

IMPRESSION: SOFT TISSUE SWELLING WITHOUT ACUTE FRACTURES NOTED.

JOB#: 3767

Electronically Signed by STEVEN L. ALTSHULER M.D. on 06/22/2000 at 1350
REPORTED AND SIGNED BY: STEVEN L. ALTSHULER, M.D.

CC: RADIOLOGY CONSULTING ASSO

Dictated Date/Time: 06/22/2000 (1227)
Technologist: HETTY SMITH MRT (TDH)
Transcribed Date/Time: 06/22/2000 (1253)
Transcriptionist: TL.MR.DW
Electronic Signature Date/Time: 06/22/2000 (1350)
Printed Date/Time: 06/29/2000 (0856) BATCH NO: 735

1

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State's Exhibit Number 70

11

Kaufman Presbyterian Hosptial Records

12

(Copy attached)

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CAUSE NO.

F00-02424

STATE OF TEXAS

§
§
§
§
§

194TH JUDICIAL

V.

DISTRICT COURT

JEDIDIAH ISAAC MURPHY

DALLAS COUNTY, TEXAS

FILED

MAY 15 2001

JIM HAMLIN
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

BUSINESS RECORD AFFIDAVIT

Before me, the undersigned authority appeared BARBARA RAY, who, being by me duly sworn, deposed as follows:

My name is BARBARA RAY, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I am the custodian of the records of PRESBYTERIAN HOSPITAL. Attached hereto are 28 pages of records from PRESBYTERIAN HOSPITAL. These said 28 pages of records are kept by PRESBYTERIAN HOSPITAL in the regular course of business, and it was the regular course of business of for an employee or representative of PRESBYTERIAN HOSPITAL, with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the exact duplicates of the original.

Barbara Ray
AFFIANT

SWORN TO AND SUBSCRIBED before me on the 15TH day of May, 2001.

Notary Public,

Larry P. Reid State of Texas

Larry P. Reid Notary's printed name:

My Commission expires: _____



Affidavit - Solo Page

STATE'S
EXHIBIT

70

PRESBYTERIAN HOSPITAL OF KAUFMAN

1200157667 OT 402372
MURPHY, JEDIDIAH
24 / M DSUR ORT

93902 VANDIVER WILLIAM

Att. Physician: _____ Admit Date: _____ Discharge Date: _____

Anesthesiologist(s): _____ Consultant(s): _____

PRINCIPAL DIAGNOSIS: (reason for admission after study)

SECONDARY DIAGNOSIS/CO-MORBID CONDITIONS/COMPLICATIONS:

Adverse Drug Reaction? Yes ___ No ___ Drug: _____

PRINCIPAL PROCEDURE: (Surgery/Procedure for the principal diagnosis)

SECONDARY PROCEDURES: (Other surgery/procedures performed)

DISCHARGE DESCRIPTION:

AHR - ROUTINE DISCHARGE
AMA - LEFT AGAINST MEDICAL ADVICE
ATW - HOME CARE/HOSPICE RELATED TO ADM
ARS - HOME CARE/HOSPICE NOT RELATED
TO ADMISSION
ARU - HOME CARE START 3 DAYS AFTER
DISCHARGE DATE
ATA - TRANS/DISCH TO ANOTHER FACILITY,
EXCLUDING ACUTE CARE
ATD - TRANSFER TO HOSP OWNED SNU

ATE - TRANSFER TO OTHER SNU
ATH - TRANS TO ACUTE CARE GEN'L HOSP
ATI - TRANSFER TO NURSING HOME
ATV - TRANSF TO HOSP OWNED PSYCH
ATP - TRANSFER TO OTHER PSYCH UNIT
ATU - TRANS TO HOSP OWNED REHAB CNTR
ATR - TRANSFER TO OTHER REHAB CENTER
ATT - TRANS TO INPATIENT HOSPICE
DBA - EXPIRED - AUTOPSY
DBN - EXPIRED - NO AUTOPSY

PHYSICIAN: _____ DATE: _____

PATIENT SUMMARY

PRESBYTERIAN HOSPITAL OF KAUFMAN

PATIENT NAME: MURPHY, JEDIDIAH
 PATIENT TYPE: X
 SERVICE/CLINIC CODE: ORT / DSUR
 DIAGNOSIS: RUPT ULNER COLLATERAL LIGAMENT
 LT THUMB

PATIENT NUMBER : 1200157667
 MED REC NUMBER : 402372
 ROOM/BED NUMBER:
 EXPECTED ARRIVAL DATE: 07/07/00
 EXPECTED ARRIVAL TIME: 10:18

** PATIENT INFORMATION **

STREET: 727 E N COMMERCE #4
 CITY: WILLS POINT
 ZIP CODE: 75169
 MARITAL STS: S SEX: M
 SSN: 456-71-2611

STATE: TX
 PHONE NO: 903-873-6959
 BIRTHDATE: 09/01/1975 AGE : 24
 RELIGION: DNV
 CONGREGATION:

** PATIENT EMPLOYER INFORMATION **

EMP NAME: GRIFFIN PRODUCTS
 EMP ADDR:
 STATE:
 OCCUPATION:

CITY:
 ZIP CODE:
 PHONE NO.: 903-873-6388

** REGISTRATION INFORMATION **

REGISTRATION DATE: 07/07/00 ADMIT DR VANDIVER WILLIAM R 93902
 REGISTRATION TIME: 10:18 ATTND DR VANDIVER WILLIAM R 93902
 REGISTRATION SOURCE: RP REFER DR VANDIVER ZANE A T40693
 PREVIOUS ADMIT DATE: 08/23/99 ADMITTED BY: RGKSKH REF SRC: PHYS
 ACCIDENT INDICATOR: J ACCIDENT DATE: 06/22/00 ONSET DATE: 06/22/00

** EMERGENCY CONTACT INFORMATION **

NAME: CRAFT, LOGAN
 STREET:
 STATE: ZIP CODE:

RELATION TO PATIENT: OTHER
 CITY:
 PHONE NO: 903-873-2215

** GUARANTOR INFORMATION **

NAME: MURPHY, JEDIDIAH
 STREET: 727 E N COMMERCE #4
 STATE: TX ZIP CODE: 75169

RELATION TO PATIENT: SELF
 CITY:
 PHONE NO: 903-873-6959

** INSURANCE INFORMATION **

1SUBSCRIBER: MURPHY, JEDIDIAH
 GROUP NAME: GRIFFIN PRODUCTS
 MAIL TO: UNITRIN
 P O BOX 655028
 DALLAS TX 75265
 BEFN PH#: 800-926-1887
 2SUBSCRIBER:
 GROUP NAME:
 MAIL TO:

FINANCIAL CLASS: K
 POLICY NO.: 456712610 COB: 1
 GROUP NO: INS PLAN CODE: V01
 DOB: 09/01/1975
 BC PLAN:
 TREATMENT AUTHORIZE ID: TU0050A
 BEHV PH#: 888-336-8759
 POLICY NO.: COB:
 GROUP NO: INS PLAN CODE:
 DOB: BC PLAN:

BENF PH#:
 3SUBSCRIBER:
 GROUP NAME:
 MAIL TO:

TREATMENT AUTHORIZE ID:
 PRECERT PH#: BEHV PH#: COB:
 POLICY NO.: INS PLAN CODE:
 GROUP NO: DOB: BC PLAN:

BENF PH#:
 4SUBSCRIBER:
 GROUP NAME:
 MAIL TO:

TREATMENT AUTHORIZE ID:
 PRECERT PH#: BEHV PH#: COB:
 POLICY NO.: INS PLAN CODE:
 GROUP NO: DOB: BC PLAN:

BENF PH#:

PRECERT PH#:

BEHV PH#:

RGKTLW



Presbyterian
Hospital of Kauai
A Member of Presbyterian Healthcare System

Page 1 of 1 Document 42-13 Filed 05/05/10 Page 500 of 546 PageID 8412

MURPHY, JEDYDIAH

07/01/1975

07/07/00

03502 VANCOUVER WASH

DATE 6/30/00 TIME

CHIEF COMPLAINT

PRESENT ILLNESS

PAST HISTORY ALLERGIES [] NKA

REVIEW OF SYSTEMS

MEDICATIONS

SURGICAL

MEDICAL

FAMILY / SOCIAL

ASSESSMENT

B/P

T

P

R

WT

HEENT

BREASTS

CARDIOVASCULAR

CHEST

ABDOMEN

GENITOURINARY

MUSCULOSKELETAL

NEUROLOGICAL

IMPRESSION

THE RISKS, BENEFITS AND ALTERNATIVES OF THE OPERATION OR PROCEDURE HAVE BEEN EXPLAINED AND PATIENT / FAMILY

UNDERSTAND(S) AND AGREE(S) TO THE OPERATION OR PROCEDURE. [X] YES [] NO

PLAN

PROGRESS/OPERATION/DISCHARGE NOTE [] SEE DICTATION

PRINCIPAL Dx

CONDITION

INSTRUCTIONS

MEDICATIONS

FOLLOW-UP

ACTIVITY

DIET

[] INSTRUCTION SHEET COMPLETED

Physician Signature

Date

SHORT STAY RECORD

UNIVERSAL CONSENT FOR TREATMENT

I understand that my health condition requires inpatient or outpatient admission. I consent to and authorize testing, treatment and/or hospital care as ordered by my doctor and his/her consultants, associates and assistants. I authorize Hospital nurses, employees and others as necessary to carry out the instructions of my doctor(s) with respect to the procedures and treatment they have ordered. I understand that it may be necessary for representatives of outside health care companies to assist in my care. I also understand student nurses and others in professional training programs may be among the individuals who provide care to me. If I am to receive obstetrical care, this consent is given for any child(ren) born to me during this hospitalization. I understand that in connection with my treatment, photos or videos may be taken. Any tissue or body parts removed from my body may be retained or disposed of by the Hospital at its sole discretion.

I also understand and acknowledge that Texas law provides if any health care worker is exposed to my blood or other bodily fluid, the Hospital may perform tests, with or without my consent, on my blood or other bodily fluid to determine the presence of any communicable disease, including but not limited to, Hepatitis, HIV/AIDS and Syphilis. I understand that such testing is necessary to protect those who will be caring for me while I am a patient of the Hospital. I understand that the results of tests taken under these circumstances are confidential and do not become a part of my medical record.

I acknowledge and agree that the doctors participating in my care in the Hospital do not work for the Hospital. They are not employees, servants or agents of the Hospital. They are either engaged in the private practice of medicine or are licensed practitioners participating in the care of patients as part of a post-graduate medical education program. In addition to my attending doctor, other doctors who may participate in my care may include radiologists, pathologists, anesthesiologists, neonatologists, cardiologists, emergency physicians and other specialists. I acknowledge and agree that the Hospital is not responsible for the judgment or conduct of any doctor who treats or provides a professional service to me, but rather is an independent contractor who is engaged in private practice and is not an agent, servant or employee of the Hospital.

NO GUARANTEE: I acknowledge that no guarantees or warranties have been made to me with respect to treatment to be provided at this Hospital. I understand that all supplies, medical devices and other goods sold or furnished to me by the Hospital are sold or furnished on an "AS IS" basis, and Texas Health Resources disclaims any expressed or implied warranties with respect to them.

If the person signing this form is not the patient, please give full name, phone number and address:

I HAVE READ AND UNDERSTAND THIS INFORMATION.

Signature of Patient or Legally Authorized Representative

Relationship to Patient

Reason Patient Unable to Sign

Witness

Title

Date of Signature

HOSPITAL BOX MUST BE CHECKED

Texas Health Resources
UNIVERSAL CONSENT FOR TREATMENT

FORM NO. HM-998541055 (8/99)

- | | | | |
|-------------------------------|--------------------------------|-------------------------------|--------------------------------------|
| <input type="checkbox"/> AMH | <input type="checkbox"/> HMHEB | <input type="checkbox"/> MRMC | <input type="checkbox"/> PHW |
| <input type="checkbox"/> HCCH | <input type="checkbox"/> HMNW | <input type="checkbox"/> PHD | <input type="checkbox"/> SPMC |
| <input type="checkbox"/> HMEC | <input type="checkbox"/> HMSPG | <input type="checkbox"/> PHK | <input type="checkbox"/> WRH |
| <input type="checkbox"/> HMFV | <input type="checkbox"/> HMSW | <input type="checkbox"/> PHP | <input type="checkbox"/> Other _____ |



9080

THR 60 (Rev. 8/99)

PATIENT IDENTIFICATION
 HURPHY, JERODIAN
 09/01/1975 24 / M OT
 07/07/00 OSUR ORT
 53902 VANDIVER WILLIAM

AUTHORIZATION TO RELEASE VERBAL HEALTH CARE INFORMATION DURING THIS ADMISSION

With exceptions the law has created, you have the right to decide what verbal information the hospital can release during your admission. Please take a moment to read this form carefully to properly choose the option which best suits your needs.

I understand there are times when the law allows the hospital to release information regardless of whether or not I give my consent. For example, the hospital may release information to doctors, nurses and others who provide me with health care or are prospective health care providers; to government agencies as authorized by law; to insurance companies or others who are responsible for paying my medical bills; or to a court of law that issues a subpoena or court order. I understand this information may be released either orally or in document form.

I understand that "Directory Information", such as my presence in the hospital, my room number, room telephone number, age, sex, race and one word statement relating to my condition may be released to all who ask unless I specifically request to be a "No Information" patient as stated below.

☐ **STANDARD DISCLOSURE** - I authorize this hospital and medical staff members to discuss my medical history, diagnosis, treatment and prognosis with those listed below. I understand this may include information regarding testing, examination and treatment for HIV, AIDS related illness, mental health and drug, alcohol or chemical abuse.

☐ spouse _____

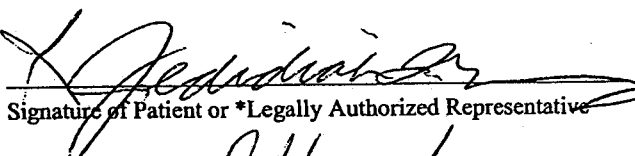
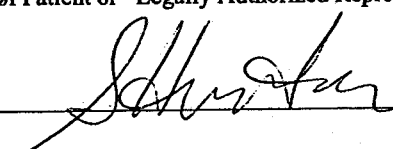
☐ children _____

☐ parent _____

☐ other _____

☐ **NO INFORMATION** - I do not authorize release of any information regarding my admission or treatment. I choose to be a "No Information" patient and I realize that mail, flowers, telephone calls and visitors will be refused on my behalf. (The hospital staff will not be able to acknowledge nor deny my absence or presence.)

This authorization will expire at the end of my hospitalization or clinic service, unless I revoke the consent prior to that time.


 Signature of Patient or *Legally Authorized Representative _____ Relationship _____ Date _____

 Witness _____ Date 7-6-00

*For Purposes of this form, "Legally Authorized Representatives" include: 1) legal guardian, 2) agents authorized in a Medical Power of Attorney, 3) Attorney or guardian ad litem appointed by the court, 4) attorney retained by the patient or patient's legally authorized representative, 5) parent or legal guardian of a minor, 6) a personal representative or statutory beneficiary if the patient is deceased, that is a spouse, adult children and parents of the deceased patient.

PATIENT IDENTIFICATION

Texas Health Resources

Authorization for Verbal Release of Health Care
Information During Admission for Services

Form HM-998540228 (Rev. 8/99)



9100

THR 63 (Rev. 8/99)

<input type="checkbox"/> AMH	<input type="checkbox"/> HMHEB	<input type="checkbox"/> MRMC	<input type="checkbox"/> PHW
<input type="checkbox"/> HCCH	<input type="checkbox"/> HMNW	<input type="checkbox"/> PHD	<input type="checkbox"/> SPMC93902
<input type="checkbox"/> HMEC	<input type="checkbox"/> HMSPG	<input type="checkbox"/> PHK	<input type="checkbox"/> WRH
<input type="checkbox"/> HMFV	<input type="checkbox"/> HMSW	<input type="checkbox"/> PHP	<input type="checkbox"/> Other _____

09/01/1975

07/07/00

OSUR

VANDIVER WILLIAM

ADMISSION ACKNOWLEDGMENTS

RELEASE OF INFORMATION: I consent and authorize the Hospital to release all information contained in my financial and medical records, including diagnoses and test results, to (a) any of my treating practitioners, (b) my insurance company or health plan, (c) any other person or entity that is responsible for paying or processing for payment of any portion of my Hospital bill, (d) governmental or accrediting agencies, (e) any other health care provider to which I am transferred for care, (f) to entities utilizing this information for quality management, peer review and/or outcome analysis such as tumor registry follow-up, or (g) any other person or entity as required or allowed by state and federal law. This consent applies to all records created in the course of and relating to this hospitalization, including those related to alcohol and/or substance abuse diagnosis or treatment, mental health treatment, and/or any communicable disease, including HIV/AIDS. To provide the practitioners who will treat me during this hospitalization with access to my prior medical history, I also consent and authorize any health care provider to release to any of the practitioners who treat me during this hospitalization all information contained in my medical records from prior treatment that is relevant to my current care and treatment. If I am the patient or the patient's legal guardian, I also consent to release of billing and medical records to my primary care physician and his/her medical group. I authorize the Hospital to release my home address, telephone number and social security number to the manufacturers of the medical devices I receive, in accordance with the medical device tracking provisions of the federal Safe Medical Devices Act.

This release shall remain valid until I notify the Hospital, in writing, of my desire to revoke it. I understand there are times when the law allows the Hospital to release information regardless of whether or not I give my consent. For example, the Hospital may release information to doctors, nurses and others who provide me with health care or are prospective health care providers; to government agencies as authorized by law; to insurance companies or others who are responsible for paying my medical bills; or to a court of law that issues a subpoena or court order. I understand this information may be released either orally or in document form whether or not I withdraw my consent.

ADVANCE DIRECTIVES:

a. To be completed for Hospital outpatients and emergency room patients only:

Are you (the patient) presenting an Out-of-Hospital DNR order or bracelet? ☐ Yes ☒ No Copy provided? ☐ Yes ☐ No

b. To be completed for Hospital inpatients and outpatients undergoing invasive procedures only:

1. Who is answering the following questions? Patient? ☒ Yes ☐ No Person with Patient? ☒ Yes ☐ No
 2. Was printed information about Advance Directives offered to you? ☒ Yes ☐ No Information received? ☐ Yes ☐ No
 3. Do you (the patient) have a Directive to Physicians (Living Will)? ☐ Yes ☐ No Copy provided? ☐ Yes ☐ No
 4. Do you (the patient) have a Medical Power of Attorney? ☐ Yes ☐ No Copy provided? ☐ Yes ☐ No
 5. Do you (the patient) have a Mental Health Directive? ☐ Yes ☐ No Copy provided? ☐ Yes ☐ No
 6. Are you (the patient) presenting an Out-of-Hospital DNR order or bracelet? ☐ Yes ☐ No Copy provided? ☐ Yes ☐ No
 7. Would you like to discuss Advance Directives with a Hospital staff member? ☐ Yes ☐ No Referral to: _____

I understand it is my responsibility to provide a copy of my Advance Directives to the Hospital.
 (*Hospital Staff Note: Shaded area indicates that Advance Directive follow-up documentation is required.)

PATIENT RIGHTS AND RESPONSIBILITIES: I have received written information regarding my rights and responsibilities as a patient. This information tells me how to register a complaint I might have.

MY VALUABLES: I understand that the Hospital does not assume responsibility for personal property I may keep with me during my treatment/hospitalization. I understand that unnecessary items should be sent home, and that a safe is available for my valuables.

FINANCIAL AGREEMENT/ASSIGNMENT OF BENEFITS: I hereby assign to the Hospital, and any practitioner providing care and treatment to me, any and all benefits and all interest and rights (including causes of action and the right to enforce payment) for services rendered under any insurance policies or any reimbursement or prepaid health care plan. If my treatment was caused by events which result in legal action, I assign to the Hospital an interest in any claims I may have. I hereby promise to pay for all services rendered to me to the extent I am legally responsible for such payment; I understand I am responsible for all health insurance copayments and deductibles. Charity care may be available if Hospital eligibility criteria are met.

If I am a MEDICAID PATIENT, I understand that the services or items that I request to be provided to me may not be covered under the Texas Medical Assistance Program as being reasonable and medically necessary for my care. I understand that the Texas Department of Human Services or its health insuring agent determines the medical necessity of the services or items that I request and receive. I also understand that I am responsible for payment of the services or items I request and receive if these services or items are determined not to be reasonable and medically necessary for my care. If I am a Medicaid Star patient, these provisions may not apply.

FOR MEDICARE/TRICARE PATIENTS ONLY: I acknowledge receipt of the written material entitled, "Important Message from Medicare/Tricare."

If the person signing this form is not the patient, please give full name, phone number and address:

I HAVE READ AND UNDERSTAND THE INFORMATION ABOVE AND ON THE BACK OF THIS FORM.

Signature of Patient or Legally Authorized Representative

Relationship to Patient

Reason Patient Unable to Sign

Witness

Title

Date of Signature

HOSPITAL BOX MUST BE CHECKED



9051

THR 61 (Rev. 8/99)

Texas Health Resources

ADMISSION ACKNOWLEDGEMENTS

FORM NO. HM-998540682 (Rev. 8/99) PAGE 1 OF 2

<input type="checkbox"/> AMH	<input type="checkbox"/> HMHEB	<input type="checkbox"/> MRMC	<input type="checkbox"/> PHW
<input type="checkbox"/> HCCH	<input type="checkbox"/> HMNW	<input type="checkbox"/> PHD	<input type="checkbox"/> SPMC
<input type="checkbox"/> HMEC	<input type="checkbox"/> HMSCPG	<input type="checkbox"/> PHK	<input type="checkbox"/> WRH
<input type="checkbox"/> HMPW	<input type="checkbox"/> HMSW	<input type="checkbox"/> PHP	<input type="checkbox"/> Other _____

PATIENT IDENTIFICATION

MURPHY, JESODIAH
 09/01/1975 24 / M OT
 07/07/00 OSUR OR
 93902 VANDIVER WILLIAM

PRESBYTERIAN HOSPITAL OF KAUFMAN

Case 3:10-cv-00163-N Document 42-13 Filed 05/05/10 Page 504 of 546 PageID 8416

SIGNATURES	DATE	TIME	TEACHING METHOD	EVALUATION	REVISION	COMMENTS

1200157547 402372
 MURPHY, JEDITHA
 09/01/1975 24 / M OT
 07/27/00 DRUP OTT
 53502 LYANCO WEA JULIAN

Teaching method code * A = audiovisual D = demonstration
 B = role play H = handout
 C = explanation G = group class

Barriers to Learning
 Identified on
 Admission Data Form

DATE	TIME	INTERVENTION Include content taught and identity of learner if other than the patient.	TIME SPENT	TEACHING METHOD	EVALUATION					REVISION			COMMENTS
					STATES/DEMONSTRATES VERBALIZES KNOWLEDGE CONTENT	CAN RETURN DEMONSTRATE	ROUTINELY PERFORMS	NO EVIDENCE OF LEARNING	RE-TEACH	NEEDS PRACTICE	ONGOING REINFORCEMENT		
7/6/00		PRE-ADMISSION : Instructed Patient & Significant Other Importance of NPO, Enemas, Showers, Pre- Operative Medications Blood draws, EKG, Chest Xray, Time to arrive Orientation to Room		C/H									
7-7-00		POST-OPERATIVE : Instructed Patient & Significant Other Medication Actions and Side Effects, Wound and Dressing Care, Icepacks, Diet, Activity.		S C									Dangerous RW.
		Discharge Instruction Sheet and Prescriptions Provided		H									

INSTRUCTIONS: (1) USE BALL POINT PEN (2) PRESS FIRMLY (3) DETACH LAST COMPLETED B. (4) IMMEDIATELY RETURN CHANGING CASES AND FORWARD TO PHARMACY.

DATE	TIME	DESCRIPTION	CHECK HERE IF APPROVED GENERIC EQUIVALENT IS NOT ACCEPTABLE
7-7-00	7:30	Allergies: iodine	
		1. Admit Day Surgery Dr Van Amer	
		2. Diet: NPO p (Midnight 7-6-00)	
		3. Labs: CBC done	
		4. pt to sign permit	
		5. Dx: Abn Collateral ligament	
7/11/00		<i>[Signature]</i>	
		<i>[Signature]</i>	DOCTOR'S SIGNATURE

1200157547 4623372
HARRIS, JEDIDIAH
1873 24
W. W. Harris
60000 W. W. Harris
WILLIAM

7/7/00 0900

1. Discharge pt home today
2. Morphine 4mg IV q 2h prn severe pain
3. Fentanyl 30mg IV Now - done PAUL.
4. Vicodin ii PO q 4h prn mild-moderate pain
5. Act-Regular

2

[Signature]

DOCTOR'S SIGNATURE

1200157547
MURPHY, JECIDIAN
09/01/1975 24 / M
07/27/68
2302

[illegible]

1200157547
MURPHY, JEDIDIAH
03/01/1975 54 / 11
03/07/80 0000
03/02 00000000



Presbyterian
Hospital of Kaufman
A Member of Presbyterian Healthcare System

08/01/1975

07/07/00

Murphy
08/01/1975
07/07/00

DISCLOSURE AND CONSENT
MEDICAL AND SURGICAL PROCEDURES

TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.

I (we) voluntarily request Dr. William R Vandine MD
as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me by my physician as:

Collateral Ligament Ruptured ulnar
under Collateral Ligament Repair Left Thumb/Hand

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures:

I (we) understand that my physician may discover other or different conditions which require additional or different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure: fever, transfusion reactions which may include kidney failure or anemia, heart failure, hepatitis, AIDS (Acquired immune deficiency syndrome) and other infections.

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure:

Infection, possible need for further surgery.

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) certify this form has been fully explained to me, that I (we) have read it or have had it read to me, that the blank spaces have been filled in, and that I (we) understand its contents.

DATE: 7-6-00 TIME: 1040 am
pm

I (we) have sufficient information to give this informed consent.

William R Vandine MD
PATIENT/Other legally responsible person sign

I have explained the risk, benefits, and alternatives and the patient/family understands and agrees to the procedure.

William R Vandine MD 7/5/00
Surgeon Sign Date Time

WITNESS:

Name: [Signature]

Address: _____

City, State, Zip: _____

DATE: 7-7-00 TIME: 7:30 am
pm

I (we) have sufficient information to give this informed consent.

William R Vandine MD
PATIENT/Other legally responsible person sign

I have explained the risk, benefits, and alternatives and the patient/family understands and agrees to the anesthesia.

William R Vandine MD 7/7/00 7:30
Anesthesiologist / CRNA Sign Date Time

WITNESS:

Name: [Signature]

Address: _____

City, State, Zip: _____

PREANESTHESIA EVALUATION				Age	Sex	Height	Weight
Proposed Procedure: <u>Hand reconstruction</u>				24	M	5'10"	142
Pre-Procedure Vital Signs				B/P	P	R	T
Previous Anesthesia / Operations				Current Medications			
<u>Gen. elect. full GA</u> <u>Appendix (ex lap) GA</u> <u>Hand GSW block GA</u> <u>Placed</u>				<u>No anesthesia problem</u> <u>φ</u>			
Family History of Anesthesia Complications				Allergies			
				<u>Iodine skin</u>			
AIRWAY / TEETH / HEAD & NECK				History From:			
<u>ok.</u>				<input type="checkbox"/> Patient <input type="checkbox"/> Significant Other <input type="checkbox"/> Parent / Guardian <input type="checkbox"/> Chart <input type="checkbox"/> Communication / Language Problems <input type="checkbox"/> Poor Historian			
SYSTEM		WNI	COMMENTS		DIAGNOSTIC STUDIES		
RESPIRATORY		<input type="checkbox"/>	Tobacco Use: <u>Yes</u> <input type="checkbox"/> No <input type="checkbox"/> Packs / Day for Years		EKG		
Asthma Bronchitis COPD Dyspnea Orthopnea Pneumonia			<u>hx of chest trauma.</u>		Chest X-ray		
CARDIOVASCULAR		<input checked="" type="checkbox"/>			Pulmonary Studies		
Abnormal EKG Angina ASHD CHF Dysrhythmia Exercise Tolerance			Hypertension MI Murmur Pacemaker Rheumatic Fever Valvular Disease				
HEPATO / GASTROINTESTINAL		<input checked="" type="checkbox"/>	Ethanol Use: <input type="checkbox"/> Yes <input type="checkbox"/> No Frequency _____ "Street Drug" Use: <input type="checkbox"/> Yes <input type="checkbox"/> No Frequency _____		Other		
Bowel Obstruction Cirrhosis Hepatitis / Jaundice Hiatal Hernia / Reflux Nausea & Vomiting Ulcers							
NEURO / MUSCULOSKELETAL		<input type="checkbox"/>			LABORATORY STUDIES		
Muscle Weakness Neuromuscular Dis. Paralysis Parosities Syncope Seizures			<u>Confined to hand.</u>		Hgb / Hct / CBC <u>15.5 / 45.9</u> <u>256</u> Electrolytes		
RENAL / ENDOCRINE		<input checked="" type="checkbox"/>			Urinalysis		
Diabetes Renal Failure / Dialysis Thyroid Disease Urinary Retention Urinary Tract Infection Weight Loss / Gain							
OTHER		<input checked="" type="checkbox"/>			Blood Usage <input type="checkbox"/> Discussed - Risks, Benefits, Alternatives <input type="checkbox"/> Planned <input type="checkbox"/> Blood Available _____ Units <input type="checkbox"/> Not Planned		
Anemia Bleeding tendencies Cancer Chemotherapy Dehydration Hemophilia			Immunosuppressed Pregnancy Sickle Cell Dis. / Trait Recent Steroids Transfusion History				
Problem List / Diagnoses				POSTANESTHESIA NOTE			
<u>Hx chest trauma / smoker</u>				1 2 3 4 5 E			
Planned Anesthesia / Special Monitoring				<u>Wagoner anderson</u> <u>Zachary</u> <u>7/24/00</u>			
Risks / Benefits / Alternatives Discussed				General Regional MAC TIVA Signed: _____ Date: _____ Time: _____			
Pre-Anesthesia Medications Ordered				PATIENT IDENTIFICATION			
Post-op Recovery Plan: PACU I PACU II SCU MED/Surg.							
Evaluator Signature				Date: <u>7/7/00</u> Time: <u>7:24</u>			

100014747 402372
 NURSEY JUDICIAL
 09/01/1995 04 / M OT
 07/07/00 DSUR ORT
 53902 VANDIVER WILLIAM

NURSING DIAGNOSIS	GOAL	GOAL ACHIEVED	
		YES	NO
1. POTENTIAL FOR KNOWLEDGE DEFICIT/ANXIETY RELATED TO SURGICAL INTERVENTION.	A. DEMONSTRATES KNOWLEDGE/COPING STRATEGIES.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. POTENTIAL FOR INFECTION.	B. NO KNOWN INFECTION RELATED TO INTRAOPERATIVE CARE.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. POTENTIAL FOR UNANTICIPATED ALTERATION TO SKIN INTEGRITY.	C. SKIN INTEGRITY MAINTAINED.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. POTENTIAL FOR INJURY RELATED TO INTRAOPERATIVE HAZARDS.	D. NO INTRAOPERATIVE INJURY OCCURS.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. POTENTIAL FOR ALTERATION OF FLUID AND ELECTROLYTE BALANCE.	E. SURGEON NOTIFIED OF ALL FACTORS RELATING TO FLUID AND ELECTROLYTE BALANCE.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

A. LEVEL OF RESPONSIVENESS: PRE-OP
☒ ALERT
☐ AGITATED
☐ DISORIENTED
☐ SEDATED
☐ UNRESPONSIVE
☐ RESPONDS TO VERBAL/TACTILE STIMULATION

A. EMOTIONAL STATUS:
☒ CALM, RELAXED
☐ APPREHENSIVE, BUT PARTICIPATED IN CARE
☐ FRIGHTENED, UNABLE TO PARTICIPATE
☐ STATED FEARS

A. SENSORY LIMITATIONS/COMMUNICATION:
☒ NO SENSORY LIMITATIONS NOTED
☐ SIGHT ☐ GLASSES/CONTACTS REMOVED
☐ HEARING ☐ HEARING AIDS REMOVED
☐ SPEECH ☐ LANGUAGE BARRIER
☐ OTHER:

A. FAMILY: ☐ NO ☒ YES REPORT TO FAMILY
WHERE: OR Lobby

A. COMFORT MEASURES IMPLEMENTED:
☒ WARM BLANKET ☒ PILLOW
☐ OTHER:

B. SKIN PREP: ☒ N/A ☐ SHAVE ☐ CLIP
☐ PRE-OP ☐ IN O.R.

B. SKIN PREP SOLUTION:
☐ BETADINE SCRUB
☐ BETADINE SOLUTION
☒ HIBICLENS ☐ PREVAIL
☐ PHISOHEX
☐ OTHER:

B. INTRAOPERATIVE CATHETER
☐ FOLEY _____ fr. _____ cc
☐ STRAIGHT CATH _____ fr.
☒ N/A
☐ CLEAR ☐ CLOUDY ☐ BLOODY

C/D. INTRAOPERATIVE POSITIONING:
TRANSFER TO O.R. TABLE PRIOR TO SURGERY:
☒ SELF ☐ ASSISTED ☐ N/A
☐ ROLLER DEVICE

TRANSFER AFTER SURGERY PER:
☒ ROLLER DEVICE ☐ ASSISTED ☐ SELF

PT. POSITIONED ON:
☐ O.R. TABLE ☐ FX. TABLE ☐ STRETCHER
☒ OTHER:

C/D. SURGICAL POSITIONS USED:
☒ SUPINE ☐ LITHOTOMY
☐ PRONE ☐ FOWLERS/SEMI FOWLERS
☐ J. KNIFE ☐ LATERAL ☐ RT. ☐ LT.
☐ OTHER:

C/D. SAFETY BELT/RESTRAINTS USED:
☒ ACROSS THIGHS ☒ B/L ☐ RT. ☐ LT.
☐ ACROSS CALVES ☐ ACROSS HIPs
☐ ACROSS FEET ☐ ACROSS ABDOMEN
☐ B/L WRISTS ☐ RT. ☐ LT.
☐ ARMS TUCKED ☐ RT. ☐ LT.
☒ BELT DURING INDUCTION/EMERGENCE
☐ OTHER:

C/D. PADDING/EQUIPMENT USED AND LOCATION:
☐ N/A
☒ PILLOWS ✓ Knees ✓ Head
☐ ROLLS/SANDBAGS
☐ PADS
☒ EGG CRATE ✓ Heels
☐ STIRRUPS
☐ LEG HOLDER
☐ KIDNEY REST
☐ ARM SLED
☐ TAPE
☐ OTHER:

C/E. SKIN INTEGRITY: PRE-OP
☒ SKIN INTACT, ADEQUATE HYDRATION
☐ TRAUMATIC WOUNDS
☐ SKIN LESIONS/ULCERS
☐ PRESENCE OF DRAINS:
(CHECK TYPES) ☐ FOLEY ☐ NG
☐ WOUND ☐ OSTOMIES
POST-OP: ☒ SAME ☐ OTHER:

D. RANGE OF MOTION: PRE-OP
☒ WITHIN NORMAL LIMITS
☐ CONTRACTURES
☐ FRACTURES ☐ CASTS ☐ TRACTION
☐ MISSING LIMBS
☐ PARALYSIS
☐ OTHER:
POST-OP: ☒ SAME ☐ OTHER:

D. RESPIRATIONS:
☒ WITH EASE ☐ LABORED
☐ VENTILATORY ASSISTANCE/PT. INTUBATED
☐ TRACHEOSTOMY ☐ OXYGEN IN USE
POST-OP: ☒ SAME ☐ OTHER:

D. ELECTROCAUTERY:
☐ MONOPOLAR: ☒ N/A
UNIT: _____ PAD SITE: _____
SETTING: CUT: _____
COAG: _____
APPLIED BY: _____
SKIN AT REMOVAL: ☐ INTACT ☐ OTHER:
☐ BIPOLAR: ☐ N/A
UNIT: _____ SETTING: _____

D. THERMAL UNITS:
☐ N/A
TYPE: ☒ BLANKETROL II TEMP: H
☐ BAIR HUGGER:

D. TOURNIQUET:
☐ N/A
UNIT: 2 LAMER 600 APPLIED BY: TR
LOCATION: ② R Arm

TIME UP	TIME DOWN	PRESSURE SETTING	TOTAL TIME
<u>0804</u>	<u>0837</u>	<u>220</u>	<u>33</u>

	PRE-OP	#1	#2	#3	CHANGE OF SHIFT CT.
SPONGE: CORRECT					
*INCORRECT					
NOT TAKEN					
SHARP: CORRECT					
*INCORRECT					
NOT TAKEN					
INSTRUMENT: CORRECT					
*INCORRECT					
NOT TAKEN					

COUNT BY:
(1) _____ CIRCULATOR NURSE
(1) _____ SCRUB NURSE
(2) _____ CIRCULATOR NURSE
(2) _____ SCRUB NURSE
(3) _____ CIRCULATOR NURSE
(3) _____ SCRUB NURSE

* ACTION TAKEN: ☐ SURGEON NOTIFIED
☐ X-RAY TAKEN

E. CELL SAVER:
☒ N/A
OPERATOR: _____
TYPE OF USE: _____

1200157667 402372

MURPHY, JEDIDIAH

09/01/1975 24 / M OT

07/07/00 OSUR ORT

93902 VANDIVER WILLIAM

Teaching method code : A = audiovisual D = demonstration
 B = role play H = handout
 C = explanation G = group class

Barriers to Learning
 Identified on
 Admission Data Form

DATE	TIME	INTERVENTION Include content taught and identity of learner if other than the patient.	TIME SPENT	TEACHING METHOD	EVALUATION							REVISION			COMMENTS	
					STUDENT KNOWLEDGE	STUDENT SKILLS	STUDENT ATTITUDE	CAN RETURN	ROUTINELY DEMONSTRATE	PERFORMS	NO EVIDENCE OF LEARNING	RE-TEACH	NEEDS PRACTICE	ONGOING REINFORCEMENT		
7/7/00	0745	PRE-OPERATIVE : Instructed Patient on Peri-Operative Process, Monitors, Positioning, Skin Prep, Electrocautery.		C												
7/7/00	0850	PACU : Instructed Patient to Deep Breath and Cough, Orientation to place and situation, Incisional splinting, Pain control, Medication Action & Side Effects Dressings, Drains, Limb elevation, and Effects of Anesthesia		C												

A Member of the Presbyterian Healthcare System

WNI OR SEE NN

DATE

7/7/60

TIME NURSES PROGRESS NOTES

0850 From OR via stretcher
 & rails T. Lungs clear
 to auscultation O₂ 40%
 FT. pt awake &
 talking. Shaking
 Applied bag huggy
 warmer. (L) hand
 cast on. Able to
 move digits on
 request. BRISK CRT.
 pt c/o severe pain
 in (L) hand. Administered
 Demerol 25mg SUP

0855 pt still has c/o pain
 Administered. bradol
 3mg SUP. Elevated
 (L) arm — Munchkin

0900 pt states pain is a
 little better Administered
 Demerol 25mg SUP for
 c/o moderate pain of
 6 on 1-10 scale — Munchkin

0905 pt resting & eyes closed.
 Resp even & unlabored
 O₂ sats satisfactory
 on room air — Munchkin

0910 Encouraged to deep
 breath & cough. pt.
 States pain is better,
 but still hurts some — Munchkin

0920 Meets discharge criteria
 for P&H. Called report
 to E. Dougherty — Munchkin

1200157667 402372
 MURPHY JEDICIAH
 09/01/1975 24 / M OT
 07/07/00 OSUR
 93902 VANDIVE

TIME NURSES PROGRESS NOTES

DISCHARGE SUMMARY

DISCHARGE TIME 0920 VIA ☐ BED ☒ STRETCHER

ACCOMPANIED BY Munchkin

TRANSPORTED WITH ☐ O₂ ☐ EKG MONITOR ☐ AMBURESTRAINTS: ☐ VEST ☐ WRISTS ☐ ANKLES

TRANSPORTED TO P&H

REPORT TAKEN BY E. Dougherty AT 09

☐ SIDE RAILS UP ☒ CALL BELL WITHIN REACHFAMILY IN ROOM ☒ YES ☐ NO

PAR SCORE/TIME	ARR	1	2	3	4	5	6	7	8	9	10
ACTIVITY	22	22	22								
RESPIRATION	22	22	22								
CIRCULATION	22	22	22								
CONSCIOUSNESS	22	22	22								
COLOR	22	22	22								
TOTAL	10	10	10								

Presbyterian Hospital of Kaufman

P.O. Box 310

Kaufman, Texas 75142

Phone (972)-932-7200

1200157547 402372
 MURPHY, JEDIDIAH
 09/01/1975 24 / M
 07/07/00
 93902 VANDIVER WILLIAM

Reason for admission: (L) thumb surgery since 6/22/00

Language Spoken: <u>English</u>	Height: <u>5' 10</u>	Weight: <u>145</u>
Religion: <u>N/A</u>	Highest Level Education: <u>grad H.S.</u>	
Allergies (Medicine, Foods, Other): <u>(Iodine - topical)</u>		
Latex Allergies: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
	NO	YES
Tobacco Use <u>✓</u>		AMOUNT DAILY <u>3/4 pack</u>
Alcohol Use <u>✓</u>		
Recreational Drug Use <u>✓</u>		

Last Menstrual Period: <u>N/A</u>		
Do you feel safe at home?	Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>	
Have you ever been physically or sexually abused?	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	
Do you have a living will / advance directive?	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	
Would you like more information?	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	

Do you have? (circle all that apply)	Dentures	Hearing Aid	Glasses/Contacts	Cane
	Walker	Braces	Wheelchair	Other:

Health Problems? (circle all that apply)	Asthma	Angina	Hiatal Hernia	Arthritis
	Bronchitis	CHF	Hepatitis	Back problems
	COPD	High Blood Pressure	Ulcers	Stroke
	Pneumonia	Heart Attack	Cancer	Fainting
	T.B.	Rheumatic Fever		Seizures
	Diabetes	Anemia		Paralysis
	Weight Gain/Loss	Bleeding Tendency		Other:

PAIN:			
None <input type="checkbox"/>	Intermittent <input type="checkbox"/>	Continuous <input checked="" type="checkbox"/>	Date of onset: <u>6/22/00</u>
Does pain interfere with functional abilities? If yes, describe: <u>Can't work - (Welder)</u>			

PREVIOUS SURGERIES	DATE
<u>(L) hand - neurosurgery. GSW</u>	
<u>(R) lung - MVA punctured</u>	
<u>lippe</u>	

NUTRITIONAL SCREENING

Obesity
Unintentional weight loss >10 lbs in past 6 months
Decreased appetite / food intake
GI Symptoms: Nausea / Vomiting, Diarrhea > 2 days
Problems: Diabetes, Decubitus ulcer (stage III or IV), Cancer (not reconstructive) HIV/AIDS
NPO or CLQ for > 3 days
TPN / Tube feeding
Pregnant / Lactating women
Nutrition Assessment: If any box above is checked (pt at nutrition risk) place order in SMS

None apply

Are you:	1) motivated to learn?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>	
	2) able to understand new information?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>	

Nurse:

Danbury



**Presbyterian
Hospital of Kaufman**
A Member of Presbyterian Healthcare System

1200157647 402372
MURPHY, JEDIDIAH
09/01/1975 24 / M OT
07/07/00 DRUP OT
33002 VAN DYKE WILLIAM

SURGICAL PROCEDURE (L) Thumb

Date: 7-7-00 Time: 7⁰⁰

If Day Surgery - Designated Driver:

Allergies Topical Iodine wife

IV Time: 7⁰⁰ IV fluid/amt R Site R Hand Gauge 20 Rate 20

Vital Signs: Temp 95.7 Pulse 72 Resp 20 B/P 133/68

PRE - OP CHECKLIST

	YES	NO	N/A	COMMENTS	RN Int.
CONSENT(S) SIGNED	/	*		* Required	
TRANSFUSION CONSENT NOTED	/	*		* Required	
HISTORY AND PHYSICAL ON CHART	/	*		* Required	
N.P.O. at <u>12</u>	/				
OPERATIVE SITE VERIFIED & LABELED	/				
ALLERGIES NOTED ON FRONT OF CHART	/				
ALLERGY BRACELET ON	/				
ID BRACELET ON	/				
BLOOD BRACELET ON			/		
JEWELRY REMOVED	/				
GLASSES / CONTACTS REMOVED	/				
DENTURES REMOVED			/		
NAIL POLISH REMOVED			/		
MAKE UP REMOVED			/		
UNDERWEAR REMOVED	/				
DR NOTIFIED OF ANY ABNORMAL REPORTS			/		
BY:					
LAB REPORTS	/				
X-RAY REPORTS			/		
EKG REPORTS			/		
OLD CHART			/		
CONSULTATION			/		
VOIDED PRIOR TO LEAVING UNIT	/				
SIDE RAILS UP	/				
MAR on Chart	/				

NURSES NOTES (PRE-OP)

TIME TO O.R. _____

NURSE SIGNATURE: _____

Surgical Pre-Op Checklist

4375



1200157667 402372
MURPHY, JEDIDIAH
09/01/1975 24 / M
07/07/00 OSUR
93902 VANDIVER WILLIAM

DATE OF SURGERY 7-7-00 TIME TO ARRIVE 6:5 AM

LOCATION: 2nd Floor - Day Surgery

FAMILY M.D. _____

SPECIFIC INSTRUCTIONS / PREPS:

ENEMA _____

SHOWER _____

MEDS TO TAKE A.M. OF SURGERY _____

OTHER: _____ Pediatric Assessment (If applicable) _____

PRE ADMISSION INSTRUCTIONS FOR PATIENT

1. Nothing to eat or drink after midnight the night before surgery, no gum, no tobacco.
2. You must have someone drive you home.
3. Wear comfortable, loose fitting clothes.
4. ~~Do not wear makeup (no mascara, no nail polish.)~~
5. ~~No contact lenses. You will be asked to remove dentures.~~
6. You will be required to remove all your clothing and wear a hospital gown prior to your procedure.
7. There is a waiting room on ground floor where your visitors may wait while you are in surgery.
8. After surgery you will return to your room until you meet discharge criteria.
9. Bring all your medications with you.
10. Leave your valuables at home.

WE LOOK FORWARD TO YOUR VISIT AND HOPE YOUR STAY WILL BE A PLEASANT ONE.

I UNDERSTAND THE ABOVE INSTRUCTIONS

PATIENT'S SIGNATURE: [Signature]

MISSION NURSE: [Signature]

DATE: 7/6/00

Ambulatory Care Unit Pre-Admission Assessment

White Copy - Patient

Yellow Copy - Medical Records

AMBULATORY SURGERY
DISCHARGE INSTRUCTIONS

In order to continue your care at home, please follow the instructions checked below.

1230157647 402372
MURPHY, JEDIDIAH
09/01/1975 24 / M ST
07/57/00 07/57/00

1. **GENERAL ANESTHESIA OR SEDATION**

- ☒ Do not drive or operate machinery for 24 hours.
Do not consume alcohol, tranquilizers, sleeping medications, or any non-prescribed medication for 24 hours.
Do not make important decisions or sign any important papers in the next 24 hours.
You should have someone with you tonight at home.
Children may appear flushed for several hours after surgery.

2. **ACTIVITY**

- ☒ You are advised to go directly home from the hospital. Restrict your activities and rest for a day. Resume light to normal activity tomorrow.
— You may resume normal activity today. Do not engage in strenuous activity that may place stress on your incision.
— Specific activity instructions: _____

3. **FLUIDS AND DIET**

- ☒ Begin with clear liquids, bouillon, dry toast, soda crackers.
If not nauseated, you may go to a regular diet when you desire. Greasy and spicy foods are not advised.
— Special diet instructions: _____

4. **MEDICATIONS**

- ☒ Prescription sent with you. Use as directed. When taking pain medications, you may experience dizziness or drowsiness. Do not drink alcohol or drive when you are taking these medications.
— You may take a non-prescription "headache remedy" type medication that you normally use, if your surgeon permits, preferably one that does not contain aspirin.
— You may resume your daily prescription medication schedule.

5. **OPERATIVE SITE**

- ☒ Keep dressing clean and dry.
— Do not change dressing.
— Change dressing when soiled or wet.
— May remove dressing _____
— May wash over incision in shower.
— Special instructions: _____

6. **EXTREMITIES: ARMS, HANDS, LEGS, FEET**

- ☒ Keep operative extremity elevated as much as possible to lessen swelling and discomfort.

7. **GYNECOLOGICAL PROCEDURES**

- No tampons, douching, or intercourse until _____
— D&C and laparoscopic patients may have varying amounts of vaginal drainage for a few days.
— Laparoscopic patients may develop shoulder pain in first 24 hours from residual gas.

8. **EAR SURGERY**

- No water or foreign objects in ears.

9. **FOLLOW-UP CARE**

- ☒ Call my office to make an appointment for your post-op check up. I want to see you: call 972-932-2122

10. **OTHER**

Call your surgeon if you have any problem that concerns you. After hours, you can reach your physician through his answering service. IF YOU NEED IMMEDIATE ATTENTION, COME TO PHK EMERGENCY CENTER OR TO ANOTHER HOSPITAL NEAR YOUR HOME.
Emergency Center Phone Number is: 972-932-7245

SPECIFIC COMPLICATIONS TO WATCH FOR:

- | | |
|--|---|
| -Fever over 101 F by mouth. | -Numb, tingling, or cold fingers or toes. |
| -Pain not relieved by medication ordered (severe). | -Blood-soaked dressing. (Small amounts of oozing may be normal.) |
| -Swelling around operative site. | -Increasing and progressive drainage from surgical area or exam site. |
| -Increased redness, warmth, hardness, around operative area. | -Inability to urinate. |

A follow-up call will be attempted by a recovery room nurse in 24-28 hours to check on your progress. If you have any questions, call your doctor.

Physician signature Will A. [Signature] Date 7/7/00

I have read and understand the above discharge instructions. I have no further questions regarding these instructions.

Patient signature [Signature] Date _____

Allergies:

Comments:

Allergies:

S: 1200157647 402372
MURPHY, JEDIDIAH
08/01/1975 24 / M OT
07/07/00 OSUR OT
33502 VAN DYKE, WILLIAM

MEOS NOT GIVEN

<input type="checkbox"/> NPO Orag	<input type="checkbox"/> E. Mod Dose
<input type="checkbox"/> B NPO Surg	<input type="checkbox"/> F. Absent from Dept
<input type="checkbox"/> C Pt Refused	<input type="checkbox"/> G. Drug not Avail
<input type="checkbox"/> D Nausea	<input type="checkbox"/> H. See Nursing Notes

INJECTION SITES

J. Right Upper Arm	O. Left Abdomen
K. Left Upper Arm	P. Right Thigh
L. Right Calf	C. Left Thigh
M. Left Calf	R. Right Ventrals

SIGNATURE /INT

SIGNATURE/INT

SIGNATURE/IN

CLINICAL LABORATORY

FINAL CHART - DO NOT DISCARD

ESBYTERIAN HOSPITAL OF KAUFMAN

0 West Highway 243

Kaufman, TX 75142

(972)932-7287

CLIA NUMBER:45D0478494 JCAHO NUMBER: 9116

Patient: MURPHY, JEDIDIAH

Hosp #: 120-0157667 Med Rec #: (00002)0000-40-23-72

Location: Room: 0202-01

Physician: VANDIVER, WILLIAM R

HEMATOLOGY

COLLECT DATE: 06JUL00

COLLECT TIME: 1046

TEST	UNITS		RANGE
Complete Blood Count			
WBC	x10 ³ /uL	6.3	3.6 - 11.1
RBC	x10 ⁶ /uL	5.06	4.27 - 5.61
HGB	g/dL	15.5	12.9 - 17.3
HCT	%	45.9	37.6 - 50.5
MCV	fL	90.7	79.3 - 97.3
MCH	pg	30.5	26.8 - 33.4
MCHC	g/dL	33.7	32.9 - 35.5
RDW	%	12.3	11.5 - 15.0
PLT	x10 ³ /uL	256	130 - 400
MPV	fL	8.3	7.5 - 10.7
NEUT	%	46.4	43.2 - 71.5
LYMPH	%	38.8	16.8 - 43.4
MONO	%	9.9	0.0 - 12.4
EOS	%	4.2	0.0 - 7.8
NE#	x10 ³ /uL	3.0	1.9 - 7.2
LYMPH#	x10 ³ /uL	2.4	1.1 - 2.7
MONO#	x10 ³ /uL	0.6	0.0 - 0.8
EOS#	x10 ³ /uL	0.3	0.0 - 0.5
BASO#	x10 ³ /uL	0.0	0.0 - 0.1

***** LAB EXPEDITE RESULT REPORT *****
 NAME: MURPHY, JEDIDIAH ACCT #: 120-0157667
 ROOM: DSUR BED: MED #: (00002)0000-40-23-72
 DOCTOR: VANDIVER, WILLIAM R ACCESSION: 00-188-00697

HEMATOLOGY

COLLECT DATE: 06JUL00

COLLECT TIME: 1046

PROCEDURE	UNITS	REFERENCE RANGE
Complete Blood Count		
WBC	$\times 10^3/\mu\text{L}$	3.6 - 11.1
RBC	$\times 10^6/\mu\text{L}$	4.27 - 5.61
HGB	g/dL	12.9 - 17.3
HCT	%	37.6 - 50.5
MCV	fL	79.3 - 97.3
MCH	pg	26.8 - 33.4
MCHC	g/dL	32.9 - 35.5
RDW	%	11.5 - 15.0
PLT	$\times 10^3/\mu\text{L}$	130 - 400
MPV	fL	7.5 - 10.7
NEUT	%	43.2 - 71.5
LYMPH	%	16.8 - 43.4
MONO	%	0.0 - 12.4
EOS	%	0.0 - 7.8
NE#	$\times 10^3/\mu\text{L}$	1.9 - 7.2
LYMPH#	$\times 10^3/\mu\text{L}$	1.1 - 2.7
MONO#	$\times 10^3/\mu\text{L}$	0.0 - 0.8
EOS#	$\times 10^3/\mu\text{L}$	0.0 - 0.5
BASO#	$\times 10^3/\mu\text{L}$	0.0 - 0.1

MURPHY, JEDIDIAH

(00002)0000-40-23-72 00-188-00697

*****END OF CHART *****

PRINTED: 06JUL00 1050

✓ WD

PRE-OP VERIFICATION FORM

09/01/1975

07/07/00

SURGERY DATE 7-7-00

MJC

TGS

JAR

RRS

VANDI

PHD

PHT

PRSC

PRE-OP DATE _____

PRE OP LOCATION:

DALLAS

PLANO

WYLIE

PT NAME: Jehidiah Murphy DOB: _____
 INSURANCE CO: Unitron PPO HMO MC WC INDEMNITY
 PRIMARY _____ SECONDARY _____ SUPPLEMENT _____

VERIFY

ADDRESS _____

CITY/STATE/ZIP: _____

INSURED: _____ DOB: _____

SS#: 456-71-2610 GROUP _____ PLAN _____

WORK COMP CLAIM #: _____ D.O.I. _____

EMPLOYER Griffin Products W/C CARRIER UnitronADJ Chuck Donly PHONE NO. _____REVIEW CO SW Medical PHONE NO. 214 888-336-8159

PRECERT

PHONE #: 877-768-5439
214 368-4963 SPOKE TO: Kami

CPT CODE _____ DIAGNOSIS CODE _____

DAY SURGERY ☒ DAY SURGERY 23 HR _____ SAME DAY ADMIT _____ IH _____AUTH# FULL COB SPA # OF DAYS _____ GLOBAL _____

VALID REFERRAL FROM PCP IN EFFECT YES NO _____

NUMBER OF VISITS LEFT _____ GOOD TILL _____ ASST SURGEON YES NO _____

SECOND SURGICAL OPINION: NO YES DATE _____ /BY _____

BENEFITS

PHONE #: _____ SPOKE TO: _____

COPAY: \$ _____ DEDUCTIBLE: \$ _____ MET: \$ _____ YEAR _____

EFFECTIVE DATE: _____ PAYS _____ % OF NEG FEE R/C TO OOP OF \$ _____

(DOES DOES NOT INCLUDE DEDUCTIBLE), THEN PAYS _____ % OOP MET \$ _____

L.T. MAX \$ _____ BENEFITS AVAILABLE FOR ASST SURGEON YES NO _____

IN NET WORK _____ OUT NETWORK _____ PRE-EXISTING CONDITION YES NO _____

COMMENTS _____

DATE _____ BY _____

SURGERY CHECK LIST

1. Surgery Scheduled 7-7-00
2. Insurance Verified: ☒

DEPOSIT

REFER TO LEDGER/ADD NOTE Yes No DISCUSSED WITH PATIENT: _____

DATE: _____ /BY _____

See attached



1200157647 402072
 MURPHY, JEDIDIAH
 09/01/1975 24 / M
 07/07/00 OSUR
 03502 VAN DYKE, WILLIAM

TIME FROM PACU

0925

O.R.

G.I. LAB

IV: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		LOC		Dressing: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		NAUSEA: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Fluids/Amount/Rate: RL KVO		Awake <input checked="" type="checkbox"/> Alert <input checked="" type="checkbox"/> Oriented <input checked="" type="checkbox"/> Other * <input type="checkbox"/>		Site: Cast + Drenal		Pain: None <input checked="" type="checkbox"/> Mild <input type="checkbox"/> Moderate <input type="checkbox"/> Severe <input type="checkbox"/>	
Site: Drenal		RESP: WNL <input checked="" type="checkbox"/> Abnormal <input type="checkbox"/>		Drainage: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Scant <input type="checkbox"/> Med <input type="checkbox"/> Large <input type="checkbox"/> Color: Serous <input type="checkbox"/> Sanguinous <input type="checkbox"/>		Siderails Up: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Edema: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		SKIN:		Drains: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Type: <input type="checkbox"/> Amount: <input type="checkbox"/>		Call light within reach: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Next IV Time: <input type="checkbox"/>		Warm <input checked="" type="checkbox"/> Cool <input type="checkbox"/> Other * <input type="checkbox"/>		Foley: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Family / S.O. Present: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Fluids/Amount/Rate: <input type="checkbox"/>		CIRCULATION STATUS:		Voided Time: 0955		RX - Given: H received prior to Hosp.	
D/C Time: 0940		Site: Drenal		Amount: <input type="checkbox"/>			
Amt. Inf. <input type="checkbox"/>		Warm <input type="checkbox"/> Cool <input type="checkbox"/> Prompt Cap. Refill: 43 sec.					
J. Paul R.N.		N/A					

TIME	B/P	PULSE	RESP.	TEMP.	TIME	B/P	PULSE	RESP.	TEMP.
0930	117/65	78	18	96°					

Discharge Goals Met	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Discharge Goals Met	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
VS WNL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Discharge Instruction Sheet Signed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Circ. Status WNL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Food Drug Guide Given	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Neuro Status Unchanged	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RX Given	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Resp. Status WNL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Discharge Criteria Met	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pain Controlled with Oral Analgesic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Accompanied by Responsible Adult	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tolerating Diet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Physician Notified if discharge criteria no met * - yes []	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Voided Prior to Discharge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	* Orders received	<input checked="" type="checkbox"/>	<input type="checkbox"/>

NURSES NOTES

Arrived via stretcher from RR AVOX3 ILWNL
 arm & cast from elbow to knuckles fingers free thumb stabilize
 cap refill brisk no mild pain 0940 AT given Tol well & sit
 bed with intact skin w/o. At refused sandwich crackers & jello
 given clo mod. pain Vicodin 11 tabs given
 0955 pt anxious & ready for D/C ride has not arrived advised pt to
 remain room until ride arrived. At upset & left on elevator to
 wait on ride down stairs against medical advice At gait stage
 BCO dizziness of unsteadiness. instructed pt to keep arm & leg

Time Discharged

1000

Discharge Destination:

Home ☒Observation Room ☐* Other ☐

RN Signature:

J. Paul R.N.

PRESBYTERIAN HOSPITAL OF KAUFMAN
P.O. BOX 310, HWY. 243
KAUFMAN, TX 75142

OPERATIVE REPORT

PATIENT NAME: MURPHY, JEDIDIAH
MR#: 402372
PHYSICIAN: William R. Vandiver, M.D./ID: 93902
ADMISSION DATE: 7-7-00
OPERATION DATE: 7-7-00

ATTENDING ORTHOPEDIC SURGEON: WILLIAM RICHARD VANDIVER, M.D.

PREOPERATIVE DIAGNOSES: Rupture of the ulnar collateral ligament of the left thumb, metacarpal phalangeal joint.

POSTOPERATIVE DIAGNOSES: Same.

NAME OF OPERATION: Open end-to-end repair of the above ligament.

SURGEON: William R. Vandiver, M.D./ID: 93902

ANESTHESIA: LMA administers by Robert V. Johnston, M.D.

CC: ANESTHESIA SERVICE/ID: 93114

PROCEDURE NOTE: The patient was brought into the Operating Room and placed in a comfortable supine position on the operating table. Once LMA anesthesia had been successfully induced, a tourniquet was placed high in the patient's left arm and the patient's left upper extremity from the bottom end of the tourniquet out to the fingertips was prepped and draped in a routine sterile fashion. The extremity was exsanguinated using a 4 inch Esmarch bandage and the tourniquet was inflated to 220 mm/Hg. A bayonet type incision was made on the dorsal ulnar aspect of the base of the thumb centered over the metacarpal phalangeal joint. Dissection was carefully carried through the subcutaneous fat until the abductor aponeurosis could be seen. The piece of ligament could be seen at the superior end of the piece of aponeurosis. The aponeurosis was split with a pair of scissors. The tendon ends were fairly well approximated once the aponeurosis was split. The repair was carried out using #2-0 Vicryl until a solid repair was achieved. The aponeurosis was repaired back over the ulnar collateral ligament using #4-0 Vicryl and the subcutaneous was also approximated using #4-0 Vicryl. The skin was closed using #4-0 nylon vertical mattress sutures.

A sterile dressing consisting of bacitracin ointment, Adaptic, 4 x 4s and Webril was placed. The tourniquet was taken down. Tourniquet time was 33 minutes. After this, a short arm thumb spica cast was applied using 2 inch fiberglass rolls.

PATIENT NAME: MURPHY, JEDIDIAH
MR#: 402372
PHYSICIAN: William R. Vandiver, M.D./ID: 93902

ESTIMATED BLOOD LOSS: Minimal.

There were no specimens and no complications.

Before placing the cast, the patient's joint was stressed and it was seen to be stable now as it was, as the right side was during the preoperative examination.

The patient was taken to the Post Anesthesia Care Unit in stable condition.


William R. Vandiver, M.D./ID: 93902

TM
DD: 07-07-00
DT: 07-07-00

(END OF REPORT)

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State's Exhibit Number 71
Doctors Hospital Records
(Copy attached)

F00-02424-M

THE STATE OF TEXAS

V.

JEDIDIAH ISAAC MURPHY

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IN THE 194TH JUDICIAL

DISTRICT COURT OF

DALLAS COUNTY, TEXAS

AFFIDAVIT

STATE OF TEXAS

COUNTY OF Bowie

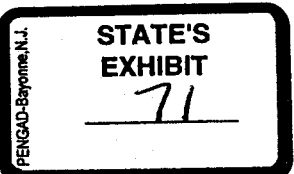
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BEFORE ME, the undersigned authority, on this day personally appeared

Virginia White, who being by me duly sworn, deposed as follows:

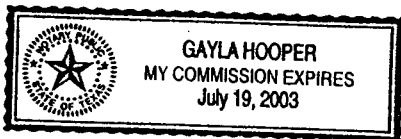
"My name is Virginia White, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Doctors Hospital. Attached hereto are 5 pages of records from Doctors Hospital. These said 5 pages of records are kept by Doctors Hospital in the regular course of business, and it was the regular course of business of Doctors Hospital for an employee or representative of Doctors Hospital with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."



Virginia White
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 24th day of January, 2000,
to certify which witness my hand and seal of office.



Gayla Hooper
Notary Public in and for
Bowie County, Texas

My Commission Expires:

July 19, 2003

AGENCY
M RECORD

Case 3:10-cv-00163-N Document 42-13 Filed 05/05/10 Page 529 of 546 PageID 8441

☐ BLUE CROSS☐ COMMERCIAL☐ MEDICARE☐ WKMN COMP☐ MEDICAID☒ SELF PAY

HOSP. NO.

CHART NO. 25141	ADM. DATE 9-13-96	DRIVER'S LICENSE NO.	MEDICAL RECORD NO. 49166	RACE Cauc	SOCIAL SECURITY NO.
FIRST NAME Murphy Matthew		M.I. S	BIRTHDATE 9-18-75	AGE 20	SEX M
ACCIDENT INFO.		FAMILY DOCTOR/DOCTOR ON CALL Gurav			
TIME	GUARANTOR NAME Matthew Murphy	ADDRESS (BOX NO. & STREET NO.) 5018 W. Walters		CITY New Boston, TX	STATE TX
LOCATION	EMPLOYER Snelling Temporary	ZIP 75570			
OVER ADDRESS					PHONE - EMPLOYER

HOSPITALIZATION INSURANCE OR MEDICARE Self		SUBSCRIBER'S NAME	CERT. OR POLICY NO.	GROUP NO.
PATIENT		PHONE		
WIGHT BY:	<input type="checkbox"/> SELF <input type="checkbox"/> FIRE	<input checked="" type="checkbox"/> RELATIVE <input type="checkbox"/> POLICE	<input type="checkbox"/> OTHER	CONDITION ON ARRIVAL:
		<input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR	<input type="checkbox"/> POOR <input type="checkbox"/> CRITICAL	<input type="checkbox"/> SHOCK <input type="checkbox"/> COMA
		<input type="checkbox"/> HEMORRHAGE <input type="checkbox"/> D.O.A.		

OF:	ARRIVAL 0030	TIME NOTIFIED 0100	TIME OF EXAM	DISCHARGE	PREVIOUS TREATMENT AT N.B.G.H.	DATE
PLAINT & HISTORY C/O puncture wound to palm of hand 2nd to being shot in hand & pellet gun while handling to around 0013. to right CFT 3 sec sensory perception 2nd, 3rd, 4th + 5th digits.					TETANUS IMM. BOOSTER	DATE
					FIRE POLICE	

LMP:					ACUITY LEVEL 1 2 3 4				
TIME	T	P.	R.	B.P.					
0035	98	78	20	134/10					
0045		76	18	146/92					

TIME MEDS:	None
OTHER ALLERGIES:	Iodine
TINENT PHYSICAL FINDINGS: DIAGNOSIS/IMPRESSIONS	

REQUESTED	<input type="checkbox"/> LAB <input type="checkbox"/> X-RAY <input type="checkbox"/> E.K.G.
TESTS ORDERED: (LIST)	

ADMITMENT	
0100 Released to site cleaned, drug applied. instructions to Return per T.O. Dr. Gurav.	

LOCATIONS	SITE	TIME	BY WHOM
Duricef	P.O.	0120	
Motrin 800mg	P.O.	0120	
Talinin 30mg 1m (L) hip		1135	mmuer
R. tub. cath 500mg TAP			

ADDITION OF PT. AT CHARGE/TRANSFER:	<input checked="" type="checkbox"/> SAME <input type="checkbox"/> IMPROVED	<input type="checkbox"/> DETERIORATED <input type="checkbox"/> EXPIRED	ADMITTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	TIME	DOCTOR	ROOM NO.
NURSE'S NAME (TYPE OR PRINT)				PHYSICIAN'S NAME (TYPE OR PRINT)		
SIGNATURE x Rich				SIGNATURE x 9/13/96		

EMERGENCY
MEDICAL RECORD

CHART NO. 25141	ADM. DATE 9-13-96	DRIVER'S LICENSE NO.	MEDICAL RECORD NO.	RACE	SOCIAL SECURITY NO.
FIRST NAME M. HAN		M.I. S	BIRTHDATE 7-10-75	AGE 20	SEX M
PATIENTS PHONE NO.					

TREATMENT RECOMMENDED

<input type="checkbox"/> Sutured	<input type="checkbox"/> X-Ray	<input type="checkbox"/> Tetanus Booster	<input type="checkbox"/> Medication
<input type="checkbox"/> Lavaged	<input type="checkbox"/> Lab Test	<input type="checkbox"/> Hypertet & Booster	<input type="checkbox"/> Other

NOTE: Treatment given in the Emergency Service is offered as emergency first care ONLY. Follow-up treatment by a physician may be important for your safety, and you are urged to follow carefully the instructions checked below:

☐ TETANUS - Within the next 24 hours, consult your physician as to whether or not you should receive injections to protect you against the disease of tetanus (lockjaw).

As a consequence of even small injuries this disease can be fatal, so the considered advice of your physician will be essential to your safety.

☐ HEAD INJURY - Contact your physician immediately if any of the following conditions occur:

- Persistent or increasingly severe headache
- Vomiting
- Unusual drowsiness
- Drainage of blood or fluid from ear or nose
- Convulsions
- Weakness of limbs or loss of coordination
- Blurred vision
- Stiffness of neck

☐ NECK AND BACK INJURIES

- ___ 1. Complete bed rest for 24 or 48 hours
- ___ 2. Sleep on a firm mattress or place boards under your mattress
- ___ 3. Apply wet heat (warm towel) to affected area
- ___ 4. See family doctor or return to Emergency Room if NO improvement in 48 hours.

☐ VOMITING

- ___ 1. No food or liquids for 4 hours
- ___ 2. Only clear liquids for first 24 hours
- ___ 3. If vomiting persists see family doctor or return to Emergency Room

☐ WOUND CARE

- ___ 1. Keep wound cleaned and dry.
- ___ 2. See family doctor or return to Emergency Room immediately if FEVER or other signs of infection occur: (1) Redness, (2) Swelling, (3) Discharge or (4) Red streaks on skin from wound.
- ___ 3. See family doctor or return to Emergency Room as indicated below:
 - (1) ___ days following injury for wound examination
 - (2) ___ days following treatment for removal of stitches

☐ SPRAINS AND BRUISES

- ___ 1. Elevate affected part.
- ___ 2. Apply ice packs to affected area for 10-20 minutes four times daily during first 24 to 48 hours following injury.
- ___ 3. No weight bearing on affected area for ___ days.

☐ CAST CARE

- ___ 1. Keep casted limb elevated
- ___ 2. Report any numbness or tingling to your doctor
- ___ 3. Keep your cast dry
- ___ 4. Report any signs of infection (1) Redness, (2) Swelling, (3) Discharge or foul odor.
- ___ 5. Do not insert sharp objects in your cast to relieve itching

Within the next ___ days, check with your physician for:

- ☐ Removal of sutures
- ☐ Examination of wound
- ☐ Further treatment of the condition which brought you here

☐ Other _____

PATIENT ACKNOWLEDGEMENT OF INSTRUCTIONS AND ADVICE

I have received and understand the instructions indicated above. I understand that I had emergency examination and/or treatment only and that I will arrange for follow-up treatment as instructed above.

Matthew Murphy
PATIENT'S OR RESPONSIBLE PERSON'S SIGNATURE

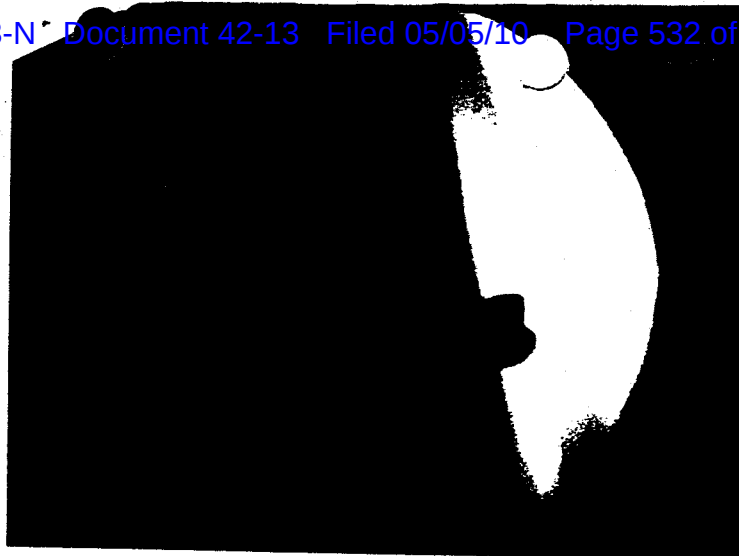
9-13-96
DATE

[Signature]
PHYSICIAN SIGNATURE

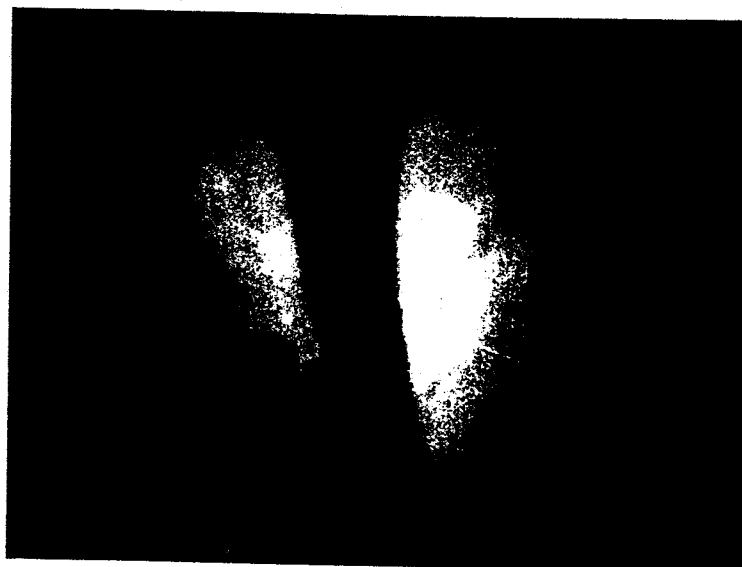
EMERGENCY ROOM CHARGES

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For .3
New Boston Printing Co.



Lateral



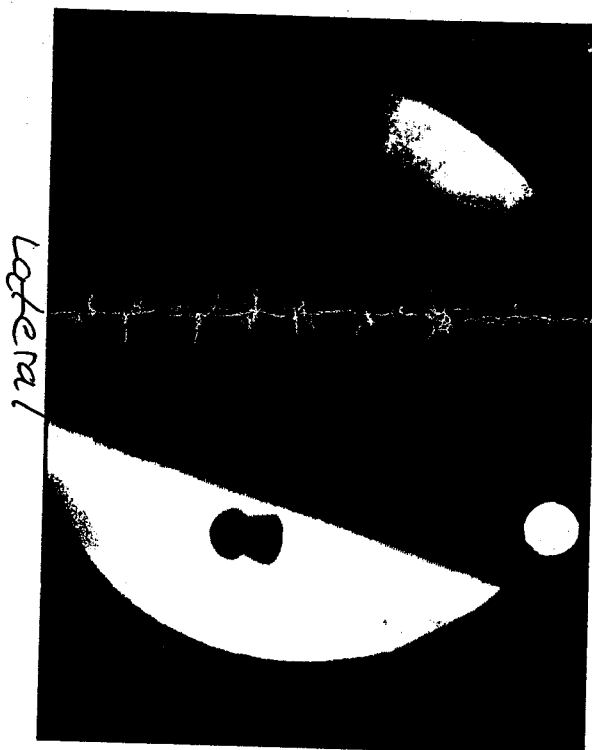
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State's Exhibit Number 72

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Dr. Dehaan's Records

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(Copy attached)

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F00-02424-M

THE STATE OF TEXAS

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§IN THE 194TH JUDICIAL

V.

DISTRICT COURT OF

JEDIDIAH ISAAC MURPHY

DALLAS COUNTY, TEXAS

AFFIDAVIT

STATE OF TEXAS

§
§
§COUNTY OF Bowie

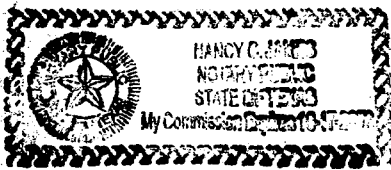
BEFORE ME, the undersigned authority, on this day personally appeared Jeffrey T. DeHaan, M.D., who being by me duly sworn, deposed as follows:

"My name is Jeffrey T. DeHaan, M.D., I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Jeffrey T. DeHaan, M.D. Attached hereto are 9 pages of records from Jeffrey T. DeHaan, M.D. These said 9 pages of records are kept by Jeffrey T. DeHaan, M.D. in the regular course of business, and it was the regular course of business of Jeffrey T. DeHaan, M.D. for an employee or representative of Jeffrey T. DeHaan, M.D. with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."

Paula Hancock
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this 28th day of NOVEMBER, 2000, to
certify which witness my hand and seal of office.



Nancy C. James
Notary Public in and for
BOWIE County, TEXAS

My Commission Expires:

10-17-02

PAGE 1

MATTHEW MURPHY

963505

9-17-96

Matthew is here F/U GSW to the hand, self-inflicted. He was I & D'd emergently last week and is here for a check-up.

His wound looks good today and we'll redress it. I'll see him back next week for stitch removal. I encouraged him to start moving his fingers more in order to get the flexibility back to his fingers.

J.T. DEHAAN, M.D./ch

9-26-96

Mr. Murphy is F/U I & D of a hand bullet removal. His incision looks good and we'll take the stitches out today. We'll see him back here again on a prn basis.

J.T. DEHAAN, M.D./ch

9-26-96 X-ray, left hand/PG

9-30-96 4:00p.m. Pt. called & stated incision on hand had pulled apart & was draining & bothering him. I told pt. to go to SMH ER and have ER physician check incision tonight./KM

10-3-96

Matthew is here F/U wound dehiscence of his hand. His hand is clean, there's no evidence of any infection, and at this time we'll go ahead and redress the wound. He'll return here on a prn basis. He can go ahead and start working next Monday.

J. T. DEHAAN, M.D./ch

10/16/96 - Ultram 50mg $\dot{\bar{i}}$ q 6^o PRN pain - Super D 792-5391
#30 (KM)

10/25/96 - Cataflam 50mg $\dot{\bar{i}}$ bid #40 called to Super D 794-3508

PATIENT MEDICAL HISTORY

Name Matthew Murphy Date 9-17-95 Chart Number _____
List medication allergies Iodine
List medications you are currently taking ~~Vicodin~~ Vicodine & Anti

Name of your regular doctor _____
List any operations you have had Hand Surgery

Work History

What type of work do you do? Fork lift
If retired, what year? _____
If disabled, what is your disability? _____

Medical History

Check if you have been, are being treated for, or have a problem with:

- | | | |
|--|---|---|
| <input type="checkbox"/> seizures | <input type="checkbox"/> poor circulation | <input type="checkbox"/> liver disease |
| <input type="checkbox"/> dizziness | <input type="checkbox"/> heart disease | <input type="checkbox"/> female problems |
| <input type="checkbox"/> blackouts | <input type="checkbox"/> irregular heart beat | <input type="checkbox"/> joint, bone pain |
| <input type="checkbox"/> visual problems | <input type="checkbox"/> nausea, vomiting | <input type="checkbox"/> skin problems |
| <input type="checkbox"/> headaches | <input type="checkbox"/> stomach pain | <input type="checkbox"/> blood in urine |
| <input type="checkbox"/> hearing problems | <input type="checkbox"/> indigestion | <input type="checkbox"/> kidney stones |
| <input type="checkbox"/> hoarseness | <input type="checkbox"/> vomit blood | <input type="checkbox"/> kidney or bladder |
| <input type="checkbox"/> cough up blood | <input type="checkbox"/> blood in stool | <input type="checkbox"/> infections |
| <input type="checkbox"/> chest pain | <input type="checkbox"/> anemia | <input type="checkbox"/> prostatitis |
| <input type="checkbox"/> shortness of breath | <input type="checkbox"/> diabetes | <input type="checkbox"/> leakage of urine |
| <input type="checkbox"/> high blood pressure | <input type="checkbox"/> tumor or cancer | <input type="checkbox"/> asthma |
| <input type="checkbox"/> urinary retention | <input type="checkbox"/> gallstones | <input type="checkbox"/> ulcer |
| <input type="checkbox"/> glaucoma | <input type="checkbox"/> thyroid disorder | <input type="checkbox"/> stroke |
| <input type="checkbox"/> blood clots | <input type="checkbox"/> nervous disorder | <input type="checkbox"/> bleeding disorder |
| <input type="checkbox"/> colitis | <input type="checkbox"/> swelling of feet | <input type="checkbox"/> breast problems |
| <input type="checkbox"/> change of bowel | <input type="checkbox"/> chronic cough | <input type="checkbox"/> pregnancy |
| <input type="checkbox"/> habits | <input type="checkbox"/> leg pain | <input type="checkbox"/> nursing(currently) |

Family History

- ☐ diabetes
☐ heart disease
☐ kidney disease
☐ cancer or tumors

Signed

Matthew Murphy 9-17-96

Updated _____

Wadley Regional Medical Center
OPERATING ROOM NURSING REPORT

Page: 1

PROCEDURE DATE: 09/13/96 ROOM: 03000

PATIENT NAME: MURPHY, MATTHEW

ACCT#: W02423929

UNIT#: M0089550

PREOPERATIVE ASSESSMENT:

Allergies: Iodine

Awareness Level: Alert

Oriented

Anxiety Level: Cooperative

Nervous

Skin Integrity: Warm

Dry

Other

If Skin Integrity is listed as OTHER, please see below for clarification.

DEMA, TAUT SKIN LEFT HAND. MOVEMENT INTACT.

Mobility: No Limitations

NPO Status: N

CBC: Y

CHEM: N

UA: N

Chest: Y

EKG: N

H&H: Y

PT/PTT: N

Other: XRAY BONE

Appropriate Permits: Y

Chart checked and verified by: Nicole Foster, RN

Armbands: ID: Y

Allergy: Y

Blood: Y

BBK: Y

Operative procedure site confirmed: Y

Comments: REPORTS WEARING CONTACT IN RIGHT EYE ONLY. CONTACT REMOVED PER-

PT. AND IMMEDIATELY IMMERSSED IN BSS IN LABELED CONTAINER.

Pre-op shave completed: Y

Pre-op Visit: Holding Room

Patient Oriented to OR: Y

Case Cancelled: N

In OR: 1600 Anesth. Start: 1600 Surg Start: 1622 Surg End: 1645 Out OR: 1655
-----Case Classification: ~~Elective~~ Wound Classification: Contaminated

Pre-Op Diagnosis: GSW LEFT HAND

Post-Op Diagnosis: SAME

Procedure:

Misc Procedure: FASCIOTOMY LEFT HAND

Additional Procedure:

Family Notified: 1625 / / / / / / / / / /

Attending Surgeon: DeHaan, Jeffrey T.

Scrub Nurse: Patricia Byram, LVN

Circulating Nurse: Nicole Foster, RN

Anesthesiologist/CRNA: David Lummus, CRNA

Dianna Robinson, M.D.

Anesthesia Type: General

POTENTIAL FOR INJURY RELATED TO:

GOAL: Patient will remain injury free.

P 55"
55" C

Wadley Regional Medical Center
OPERATING ROOM NURSING REPORT

Page: 2

PROCEDURE DATE: 09/13/96 ROOM: 03000

PATIENT NAME: MURPHY, MATTHEW

ACCT#: W02423929

UNIT#: M0089550

Method of Transfer: Assisted

Positioning: Supine, Legs Parallel, Arms on Armboards

Positioning Aids: Pillow Under Head

Right Ulnar Pad

Positioned by OR Staff: Nicole Foster, RN

Positioned by Anesthesiologist/CRNA: David Lummus, CRNA

Safety Strap Applied: Y Location: Upper Thighs

EQUIPMENT:

ESU: Y ID#: D Cut: 1 Coag: 40 Bipolar#: Setting:

Pad Location: Right Thigh

Post-op skin condition: Clear

Tourniquet: Y Location: L Upper Arm Up: 1622 Down: 1643 Setting: 250 mmHg

Post-op skin condition: Clear

FIRST COUNT:

Circulator: NF Scrub: PB Sponge: C Needles/Sharps: C Instruments: C

CLOSING COUNT:

Circulator: NF Scrub: PB Sponge: C Needles/Sharps: C Instruments: C

FINAL COUNT:

Circulator: NF Scrub: PB Sponge: C Needles/Sharps: C Instruments: C

MD notified of count: Y

POTENTIAL FOR ALTERED BODY TEMP/COMFORT:

Goal: Patient will maintain normal body temperature intra-operatively.

Temp Probe: None

Warm blanket applied: Y

IRRIGATION SOLUTIONS:

Sterile H2O: Y #Used: 1

Normal Saline: Y #Used: 1

MEDICATIONS:

Bacitracin 50,000u

SPECIMENS: Y

Other: BULLET LEFT HAND TO SECURITY: WOOTEN

Wadley Regional Medical Center
OPERATING ROOM NURSING REPORT

Page: 3

PROCEDURE DATE: 09/13/96 ROOM: 03000

PATIENT NAME: MURPHY, MATTHEW

ACCT#: W02423929

UNIT#: M0089550

POTENTIAL FOR INFECTION:

Goal: Avoidance of patient infection.

Surgical Skin Prep:

Number	Location	Solution
#1	L Hand to Elbow	Hibiclens/Alcohol

Dressings/Packs: Adaptic

4X4

Kerlix Rolls

ABD

Ace Bandage 4"

Tape: Silk

Catheter:

POTENTIAL FOR INJURY DURING TRANSFER:

Goal: Patient will be transferred without injury.

Method: Lifter

Roller

Stretcher

Airway: Extubated

Room Air

From OR: Awakening

Discharged to: PACU

Comments/Evaluation: LEFT HAND ELEVATED. SANGUINOUS DC ON ACE: SURGEON INFORMED,
ADDITIONAL DRESSING ORDERED. ABD'S AND ADDITIONAL ACE APPLIED
WITHOUT INCREASE IN DRAINAGE.

Signed: 

Signed: _____

Signed: _____

END OF REPORT

WADLEY REGIONAL MEDICAL CENTER

HISTORY AND PHYSICAL EXAMINATION

PT. NAME: MURPHY, MATTHEW

ACCT. #: W02423929

MR UNIT #: R0089550

ADMISSION DATE: 09/13/96

ROOM #: 495

DISCHARGE DATE:

ADMISSION DIAGNOSIS:

Gunshot wound left hand, volar entrance with paresthesias to the hand.

HPI: This is a thin man who shot himself in left hand in the volar entrance area. He presented to the Emergency Room in New Boston and was transferred here, told to get a doctor who specializes in hand problems. He presents to the Emergency Room here with a swollen hand, tender, with paresthesias in the long, ring, and 5th fingers.

PMH: Negative.

PHYSICAL EXAMINATION:

GENERAL: Healthy, skinny gentleman.

VITAL SIGNS: Stable.

LUNGS: Clear.

ABDOMEN: Non-tender.

ORTHO: He has a volar entrance wound pretty much smack in the middle of the palm. You can palpate the pellet in the dorsal aspect of the hand. He does have decreased sensation to the 3rd, 4th, and 5th digits. The index and thumb are OK. He has good flexor tendon flexion to all digits. Good capillary refill of the fingers.

PLAN: At this time he will be admitted for incision and drainage of the palmar area. Also, want to remove the bullet as well as are going to be there.

Jeffrey T. DeHaan

D: DENJT

T: DA

DD: 09/13/96

DT: 09/13/96

**WADLEY REGIONAL
MEDICAL CENTER**

OPERATIVE RECORD

PT. NAME: MURPHY, MATTHEW

ACCT. #: W02423929

ROOM #: 495

MR UNIT #: M0089550

ADMISSION DATE: 09/13/96

DISCHARGE DATE:

DATE OF OPERATION: 09/13/96

PREOP. DIAG.: Gunshot wound left hand with swelling of the left hand and paresthesias of the hand.

POSTOP. DIAG.: Same.

PROCEDURE: Incision and drainage with fasciotomy of the left hand palmar aspect.
Removal of foreign object dorsum of hand.

SURGEON: DeHaan.

ANESTHESIA: General.

POSITION: Supine.

NARRATIVE: The patient was brought to the Operating Room and put under general anesthesia. The left hand was prepped and draped in routine sterile fashion. An incision was made in the distal palmar crease and advanced through subq tissue. There was a small hematoma present but not drastic. The entire fascia was decompressed. The nerves were inspected and there was no nerve laceration. This area was irrigated copiously and then it was closed very loosely with three 3-0 Nylon sutures. A longitudinal incision was made over the dorsum of the hand and advanced down to the pellet which was removed without difficulty. This wound was also closed with 3-0 Nylon. A sterile bulky dressing was then applied to the hand and he was taken to the Recovery Room in stable condition.

Jeffrey T. DeHaan

D: DEHJT T: DA
DD: 09/13/96 DT: 09/13/96

PATIENT NAME Last First <u>MURPHY Matthew</u>		Date Of Birth <u>9/18/75</u>	Sex <u>M</u>	Social Security <u> </u>	Relationship to R/P <input type="checkbox"/> Self <input type="checkbox"/> Child <input type="checkbox"/> Spouse <input type="checkbox"/> Other	
Street Address <u>501 B West Walters</u>		City <u>NEW Boston TX</u>	State <u>TX</u>	Zip Code <u>75570</u>	Phone <u> </u>	
Maiden Name <u> </u>	Marital Status <u>M S W D Sep</u>	Employer Name <u> </u>		Type Of Work <u> </u>	Driver's License# St. <u> </u>	
Employer Phone <u> </u>		Employer Address <u> </u>		City <u> </u>	State <u> </u>	Zip Code <u> </u>
Friend Or Relative <u>Chelsea 11:11:5</u>		Relationship <u>girlfriend</u>	Phone <u>903 628-4129</u>	Address <u>Same</u>		City <u> </u>
Drug Allergies, If Any <u> </u>		State <u> </u>		Zip Code <u> </u>		
Responsible Party (R/P) Name Last First MI <u>myself</u>		DOB <u>1/1</u>	Sex <u> </u>	Social Security Number <u> </u>		
R/P Address <u> </u>		City <u> </u>	State <u> </u>	Zip Code <u> </u>	Phone <u> </u>	
Employer Name <u> </u>		Phone <u> </u>		Type Of Work <u> </u>		
Insurance Co. Name (Primary) <u>none</u>		Policy No./Member I.D. <u> </u>		Ins. Co. Group No. <u> </u>	Coverage Date <u>1/1</u>	Expiration Date <u>1/1</u>
Insurance Co. Address <u> </u>		City <u> </u>		State <u> </u>	Zip Code <u> </u>	
Insured Name (If Not R/P) <u> </u>		Patient Relation To Insured <input type="checkbox"/> Self <input type="checkbox"/> Child <input type="checkbox"/> Spouse <input type="checkbox"/> Other		Insurance Phone Number <u> </u>		
Insurance Co. Name (Secondary) <u> </u>		Policy No./Member I.D. <u> </u>		Ins. Co. Group No. <u> </u>	Coverage Date <u>1/1</u>	Expiration Date <u>1/1</u>
Insurance Co. Address <u> </u>		City <u> </u>		State <u> </u>	Zip Code <u> </u>	
Insured Name (If Not R/P) <u> </u>		Patient Relation To Insured <input type="checkbox"/> Self <input type="checkbox"/> Child <input type="checkbox"/> Spouse <input type="checkbox"/> Other		Insurance Phone Number <u> </u>		
Were You Injured On The Job? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Date Of Injury <u>1/1</u>	Describe Accident <u> </u>		Name Of Attorney <u> </u>	
Was An Automobile Involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Date Of Injury <u> </u>	Were X-Rays Taken? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, Where Were X-rays Taken? <u> </u>	Date X-rays Taken <u> </u>	
Referred By <u> </u>		Reason For Seeing Doctor <u>Chiropractic hand</u>				

All Professional Services Rendered Are Charged To the Patient. Necessary Forms Will Be Completed To Help Expedite Insurance Carrier Payments. However, The Patient Is Responsible For All Fees, Regardless of Insurance Coverage. It Is, Also, Customary to Pay For Services When Rendered Unless Other Arrangements Have Been Made In Advance With Our Office.

INSURANCE AUTHORIZATION AND ASSIGNMENTS

I request the payment of authorized Medicare/Other Insurance Company benefits be made either to or on my behalf to Orthopedic Specialists of Texarkana, P.A. for any services furnished me by that physician/supplier. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents any information needed to determine these benefits payable to related services.

I understand my signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 of the HCFA-1500 claim form is completed, my signature authorizes releasing of the information to the insurer or agency shown. In Medicare/Other Insurance Company assigned cases, the physician or supplier agrees to accept the charge determination of the Medicare/Other Insurance Company as the full charge, and the patient is responsible only for the deductible, coinsurance and noncovered services. Coinsurance and the deductible are based upon the charge determination of the Medicare/Other Insurance Company.

SIGNATURE Matthew Murphy DATE 9-17-96

Reporter's Certificate

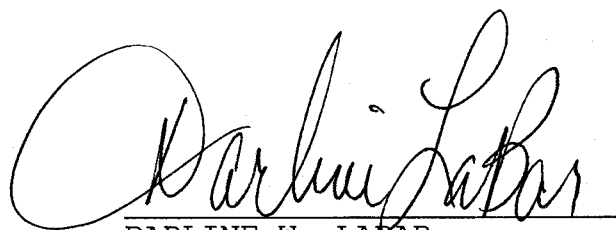
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 27th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002